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Montana
developmental plan
for occupational
safety and health

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
WORKMEN'S COMPENSATION DIVISION
815 FRONT STREET
HELENA, MONTANA 59601
FORREST H. ANDERSON, GOVERNOR

J. J. CARDEN
ADMINISTRATOR

June 30, 1972

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SECRETARY OF STATE

I HEREBY CERTIFY THAT the attached is a full and up-to-date copy of the Montana Developmental Plan for Occupational Safety and Health.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the Workmen's Compensation Division, of the Department of Labor and Industry, at Helena, the Capital, this thirtieth day of JUNE, A.D., ONE THOUSAND NINE HUNDRED AND SEVENTY-TWO.

PLEASE RETURN

J. J. Carden
Administrator
Workmen's Compensation Division

ATTEST:

Secretary

STATE OF MONTANA
DEPARTMENT OF SECRETARY OF STATE
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MONTANA DEVELOPMENTAL PLAN FOR

OCCUPATIONAL SAFETY AND HEALTH

PLEASE RETURN

State of Montana
Office of The Governor
Helena 59601

FORREST H ANDERSON
GOVERNOR

June 30, 1972

George C. Guenther
Ass't. Secretary of Labor
Occupational Safety and Health
U.S. Department of Labor
Room 3115, Main Labor Bldg.
14th and Constitution Avenue
Washington, D.C. 20210

Dear Secretary Guenther:

I am submitting the "Montana State Developmental Safety and Health Plan" in accordance with Section 18(b) "Occupational Safety and Health Act of 1970". The purpose of both the Federal Act and the attached state plan is to reduce the number and severity of work-related injuries and illnesses occurring to our employees.

It is my personal interest and desire, as both Governor of Montana and as a private citizen, that the alarming increase in human misery and economic loss due to occupational injuries and illnesses be reduced. I therefore strongly support this program and will actively assist in its development and administration throughout all phases to achieve safe and healthful worksites for our Montana workers.

The fact that I have placed the responsibility for both safety and health in a single agency in Montana can be considered one of the most forward steps taken towards directing the effort of applying skills and talents to a common problem.

I am of the opinion that we of the state can and should have an active part in the enforcement of this program with the assistance of the U.S. Department of Labor. I therefore urge you to give our plan your fullest consideration.

Sincerely,

Forrest H. Anderson
Governor

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
WORKMEN'S COMPENSATION DIVISION
815 FRONT STREET
HELENA, MONTANA 59601
FORREST H. ANDERSON, GOVERNOR

J. J. CARDEN
ADMINISTRATOR

June 27, 1972

J. J. Carden, Administrator
Workmen's Compensation Division
815 Front Street
Helena, Montana 59601

Dear Mr. Carden:

In December 1971 we were committed to the task of preparing a Montana Occupational Safety and Health Developmental Plan in accordance with Section 18(b) of the Williams-Steiger Occupational Safety and Health Act of 1970. The deadline for submission of our plan to the Region 8 Administrator is September 14, 1972.

In a program that covers numerous safety and health issues, and involves many employers and employees, there are many problems and tasks yet to be accomplished before we are permitted to fully administer a total state plan.

It is my opinion that we have made a good start in developing a plan and now place our time and efforts towards:

1. Formally adopting Federal Safety and Health Standards. A seventeen member council commenced June 1, 1972 to review the standards and should have final recommendations by December, 1972 with an effective date of November, 1973.

2. Obtaining legislative support for enactment of the Montana Occupational Safety and Health Act (MOSHA) prior to the meeting of the 1973 Legislature.

3. Developing staff qualifications and increasing our capabilities to effectively administer the Occupational Safety and Health program in Montana.

Through the efforts of a number of our staff, and the expert assistance of Roger Hazell in drafting the proposed enabling Act, our safety and health plan for Montana can, if implemented early in 1973-1974, have considerable impact towards the program reducing occupational injuries to Montana employees.

Sincerely,

BUREAU OF SAFETY AND HEALTH

Roy L. Jameson
Chief

RLJ/brs

ROGER K. HAZELL
ATTORNEY AT LAW

BOX 1041 - 403 POWER BLOCK
HELENA, MONTANA 59601
(406) 442-4338

BOX 37 - 1 LINCOLN HOTEL
LINCOLN, MONTANA 59639
(406) 362-4213

June 27, 1972

The Honorable Forrest H. Anderson
Governor, State of Montana
State Capitol
Helena, Montana 59601

Dear Governor Anderson:

Mr. J. J. Carden, Administrator of the Workmen's Compensation Division of the Department of Labor and Industry, and Mr. Roy L. Jameson, Chief, Bureau of Safety and Health, have asked me to review the proposed draft of the "Montana Occupational Safety and Health Act of 1973" as to whether the proposed bill, if passed, would, in my opinion be constitutional and meet the requirements of the "Williams-Steiger Occupational Safety and Health Act of 1970".

In my opinion the bill would be constitutional and would meet the requirements of the relevant provisions of the "Occupational Safety and Health Act of 1970".

Sincerely,

Roger K. Hazell

RKH/evw

INDEX FORM FOR STATE 18(b) PLANS

* S.P. - State Plan

Description	Location(s) in State Plan
For a developmental plan, in whole or in part, § 1902.2(b) requires the items below to be included in the State plan. Please indicate on the right hand side where in the State plan these items can be found.	
- A copy of the proposed legislation	Attachment I (MOSHA)
- A statement of Governor's support	* S.P. Preface
- A statement of legal opinion that the legislation will meet requirements of the Act	S.P. Preface
Time schedule and estimated completion dates for steps State plansto take to conform with § 1902.3 and § 1902.4.	
- Date or dates of intermediate action to be taken	S.P. Part I, Sec. 1.3
- Date or dates of final action to be accomplished	S.P. Part I, Sec. 1.3 S.P. at the end of each major Part

INDEX FORM FOR STATE 18(b) PLANS

1	2	3	4
Citation	Description	C or D	Location(s) in State Plan
1902.2(c)	A description of issue(s) and State standard(s) over which the State desires to assume enforcement responsibility, corresponding to those issue(s) and standard(s) promulgated under §-6 of the Act. (Where the State proposes variations from Federal coverage, reasons must be provided, supported with appropriate data)	D	Attachment I (MOSHA) Sec. 4 (2), Pg. 9 S.P. Part II, Sec. 2.3
1902.2(c)(3)	Identification of employers or groups of employees State excludes from coverage in any issue and reasons for such exclusions.	D	Attachment I (MOSHA) Sec. 4 (2), Pg. 9 S.P. Part I, Sec. 1.0 & 1.4
1902.3(b)(1)	Designation of State agency or agencies responsible for administering the plan throughout the State.	C	Attachment I (MOSHA) Sec. 4, Pg. 8 & 9 S.P. Appendix I
1902.3(b)(2)	Description of authority and responsibilities vested in the agency; assurances that any other responsibilities of the designated agency shall not detract significantly from resources and priorities assigned to administration of the plan.	D	Attachment I (MOSHA) Sec. 4, Pg. 8 & 9
1902.3(b)(3)	Coverage of political subdivision-State agency or agencies must have authority by statute, regulation, or agreement, to ensure fulfillment of commitments between the State and political subdivisions under the State plan.	D	Attachment I (MOSHA) Sec. 16 Pg. 35 & 36 S.P. Part I, Sec. 1.4

1 Citation	2 Description	3 C or D	4 Location(s) in State Plan
Standards			
1902.3(c)(1)	Development or adoption of standards; assurances that the State will continue to develop or adopt standards which are or will be at least as effective as those promulgated under Section 6 of the Act.	D	Attachment I (MOSHA) Sec. 6, Pg. 10-18 S.P. Part II, Sec. 2.3
1902.3(c)(2)	Standards for products distributed or used in interstate commerce cannot be different from Federal, except: compelling local conditions; customized products or parts; or optional parts, and no undue burden on interstate commerce.	D	Attachment I (MOSHA) Sec. 6 (2) (h) Pg. 16 S.P. Part II, Sec. 2.4
1902.4(b)(2)(i)	Procedure for development of State standards "at least as effective" as Federal, or adoption of Federal standards.	C	Attachment I (MOSHA) Sec. 6, Pg. 10-18 Part II, Sec. 2.3
1902.4(b)(2)(ii)	Procedure for continued standards effectiveness; amending and up-dating standards related to present and future Federal standards.	C	Attachment I (MOSHA) Sec. 6, Pg. 10-18 S.P. Part II, Sec. 2.3
1902.4(b)(2)(iii)	Procedure for development and promulgation of standards. - Consideration of pertinent factual information	C	Attachment I (MOSHA) Sec. 6, Pg. 10-18 S.P. Part II, Sec. 2.0 & 2.2

1 Citation	2 Description	3 C or D	4 Location(s) in State Plan
	- Participation of interested persons	C	S.P. Part II, Sec. 2.3
	- or adoption of Federal standards	C	S.P. Part II, Sec. 2.3
1902.4(b)(2)(iv)	Authority for the granting of variances to employers		Attachment I (MOSHA) Sec. 6, Pg. 10-18
	- Procedure for consideration of views of interested persons	D	S.P. Part XII, Sec. 12.3
1902.4(b)(2)(v)	Procedure for prompt and effective standards setting actions for protection of employees against new and unforseen hazards.	D	Attachment I (MOSHA) Sec. 6 (3) (A) Pg. 16 S.P. Appendix V Code Making Power
1902.4(b)(2)(vi)	Procedure for furnishing information to employees on hazards, precautions, symptoms and emergency treatment.	D	Attachment I (MOSHA) Sec. 6 (2) (g) & (h) Pg. 15 & 16 S.P. Part VIII, Sec. 7.1
1902.4(b)(2)(vii)	State standards, where appropriate, contain provisions for protection of employees from exposure to hazards.	D	Attachment I (MOSHA) Sec. 6 (2) (g) Pg. 15 S.P. Sec. 2.3
Enforcement 1902.3(d)(1)	Enforcement program for State standards "at least as effective" as Federal standards; provides assurances that State's enforcement program will continue to be "at least as effective" as the Federal enforcement program.	D	Attachment I (MOSHA) Sec. 10, Pg. 10-26 Attachment II MOM The MOM will be identical to the Federal Manual when completed.

1	2	3	4
Citation	Description	C or D	Location(s) in State Plan
1902.3(d)(2)	Requirement for employers and employees to comply with applicable standards, rules, orders, etc.	D	Attachment I (MOSHA) Sec. 5, Pg. 9 S.P. Part XIII, Sec. 12.3 Attachment II MOM Ch. V, Para. A, .Pg. V-1
1902.4(c)(2)(i)	Provides for inspection, including prompt response to complaints		Attachment I (MOSHA) Sec. 8 (6) Pg. 22 S.P. Part XII, Sec. 12.3 Attachment II MOM CH. V, Sec. D, Para. 2
1902.4(c)(2)(ii)	Provision to employees and their representatives of an opportunity to call attention to possible violations, before, during and after inspections.	D	Attachment I (MOSHA) Sec. 8 (6) Pg. 22 S.P. Part XII, Sec. 12.3 Attachment II MOM Ch. V, Sec. G, Pg. V-19
1902.4(c)(2)(iii)	Notification of employees or their representatives, on non-compliance action by State with informal review.	D	Attachment I MOSHA) Sec. 8 (6) Pg. 22 S.P. Part XII, Sec. 12.3 MOM Attachment II
1902.4(c)(2)(iv)	Notification of employees of protections and obligations under the Act, including provisions of applicable standards.	D	Attachment I (MOSHA) Sec. 8 (3) (a), Pg. 20 S.P. Part VII Sec. 7.1 Attachment II MOM Ch. V Sec. F Para. 2(b) Pg. V-14
1902.4(c)(2)(v)	Protection of employees against discharge or discrimination in terms and conditions of employment.	D	Attachment I (MOSHA) Sec. 11 (3) (a) Pg. 29 S.P. Part XII Sec. 12.3 Attachment II MOM Ch. VI, Sec. B, Pg. VI-4

1	2	3	4
Citation	Description	C or D	Location(s) in State Plan
1902.4(c)(2)(vi)	Provision for employee access to information on exposure to toxic materials or harmful physical agents and receipt on information when they are exposed to excessive levels.	D	Attachment I (MOSHA) Sec. 8 (3) Pg. 20-21 S.P. Part VIII Sec. 8.(
1902.4(c)(2)(vii)	Procedure for prompt restraint, or elimination of imminent danger situations.	C	Attachment I (MOSHA) Sec. 13, Pg. 32B-34 S.P. Appendices VI & VII
1902.4(c)(2)(viii)	Adequate safeguards to protect trade secrets.	D	Attachment I (MOSHA) Sec. 15, Pg. 34-35 S.P. Part XII Sec. 12. Attachment II MOM Ch. V, Sec. M, Pg. V-2
1902.4(c)(2)(ix)	State agency's necessary legal authority for the enforcement of standards.	C	Attachment I (MOSHA) Sec. 4, Pg. 8&9 S.P. Appendix II Attachment II MOM Ch. V-1, Sec. A Para. 1 & 2 Pg. V-1
1902.4(c)(2)(x)	Provides for prompt notice to employers, and employees of alleged violations of standards, and abatement requirements.	D	Attachment I (MOSHA) Sec. 9 Pg. 24 S.P. Part XII Sec. 12.3 Attachment II MOM Ch. V, Sec. 1, Para. W, Pg. V-22
1902.4(c)(2)(xi)	Effective sanctions against employers for violations of standards and orders.	D	Attachment I (MOSHA) Sec. 24 Pg. 43-46 S.P. Part III Sec. 3.0 Attachment II MOM Ch. V, Sec. I
1902.4(c)(2)(xii)	Employer right of review of alleged violations, abatement periods, and proposed penalties and provision for participation of employees or their representatives in review proceedings.	D	Attachment I (MOSHA) Sec. 11 Pg. 27-30 S.P. Part XIV Sec. 14.0

1	2	3	4
Citation	Description	C or D	Location(s) in State Plan
1902.4(d)(2)(xiii)	Programs to encourage voluntary compliance by employers and employees	D	Attachment I (MOSHA) Sec. 18, Pg. 38-39 S.P. Part VII, Sec. 7.1
Other Specific Criteria			
1902.3(e)	Right of entry and inspection and legal recourse to compel entry where refused.	D	Attachment I (MOSHA) Sec. 8(1), Pg. 19 S.P. Part XII, Sec. 12.3 Attachment II MOM Ch. V, Sec. D, Pg. V-6
1902.3(f)	Prohibition against advance notice of inspection with limited exceptions.	D	Attachment I (MOSHA) Sec. 24(2)(b), Pg. 45 S.P. Part XII, Sec. 12.3 Attachment II MOM Ch. V, Sec. B, Pg. V-1
1902.3(g)	Assurances that designated agency or agencies have or will have legal authority to enforce standards.	C	Attachment I (MOSHA) Sec. 4, Pg. 8, Sec. 22,Pg. S.P. Appendix II
1902.3(h)	Personnel - Sufficient number of adequately trained and qualified personnel hired under a State merit system.	D	Attachment I (MOSHA) Sec. 19, Pg. 39 Sec. 18, Pg. 38-39 S.P. Part IV, Sec. 4.3 Part VII, Sec. 7.0
1902.3(i)	Resources - Assurances of adequate funds provided for the administration and enforcement of the program by use of budget, organizational chart, or other appropriate means.	D	Attachment I (MOSHA) Sec. 27, Pg. 47 Sec. 28, Pg. 48 S.P. Part XI, Sec. 11.0
1902.3(j)	State and local government employees; to the extent permitted by law, the plan shall include an effective and comprehensive safety and health program for employees of public agencies and political subdivisions.	D	Attachment I (MOSHA) Sec. 16, Pg. 35-36 S.P. Part I, Sec. 1.4, 1.5 1.7

1	2	3	4
Citation	Description	C or D	Location(s) in State Plan
1902.3(k)	Employer records and reports; assurances that employers covered by the plan will maintain required records and make reports to the Assistant Secretary.	D	Attachment I (MOSHA) Sec. 17 (6) Pg. 38 S.P. Part IX Sec. 9.
1902.3(l)	State agency reports to Assistant Secretary; provides assurances that the designated agency or agencies shall make reports to the Assistant Secretary.	D	Attachnent I (MOSHA) Sec. 7 (5) Pg. 38 Sec. 20 (2) Pg. 40 S.P. Part IX Sec. 9.4 & 9.5

MONTANA DEVELOPMENTAL PLAN FOR OCCUPATIONAL SAFETY AND HEALTH

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Attachments I & II

MOSHA
Montana Operations Manual (MOM)

MONTANA DEVELOPMENTAL PLAN FOR OCCUPATIONAL SAFETY AND HEALTH

PART I - ADMINISTRATIVE PROVISIONS

1.0 General. The "Montana Occupational Safety and Health Plan" has been prepared as the state developmental plan affecting employers and employees engaged in any business affecting commerce in Montana. The plan excludes those persons and working conditions covered under the Federal Coal Mine Health and Safety Act, Atomic Energy Act of 1954, Metal and Nonmetallic Mine Safety Act, and other federally enacted exclusions that are not in conflict with the Williams-Steiger Act. The Montana Safety and Health Developmental Plan shall conform to the requirements set forth in Section 18(b), Public Law 91-596, Williams-Steiger Occupational Safety and Health Act of 1970, except for those requirements that will necessitate a change during the 1973 or later legislative sessions or major administrative and/or organizational changes that will require additional study or planning.

1.1 Definitions.

A. Workmen's Compensation Division (WCD) - designated single state agency responsible for overall administration of the Montana Occupational Safety and Health Act (MOSHA)

B. Bureau of Safety and Health (BSH) - designated state Bureau under the Workmen's Compensation Division. The BSH is responsible for implementation and execution of the state plan as it pertains to safety and health standards, compliance and training functions.

C. Proposed Montana Safety and Health Act shall be referred to as MOSHA. (See Attachment I)

D. Occupational Safety and Health Act of 1970 shall be referred to as OSHA.

E. Department of Health and Environmental Sciences shall be referred to as HES.

F. Montana Operations Manual shall be referred to as MOM.

G. Management Information System shall be referred to as MIS.

1.2 Organization of State Agencies.

A. Workmen's Compensation Division, pursuant to the Montana State Agreement approved by the Assistant Secretary of Labor for Occupational Safety and Health, shall be the single agency designated responsible for administration, supervision and coordination of the Montana Occupational Safety and Health Developmental Plan, including the statistical and recordkeeping program. (See Appendix I)

B. Workmen's Compensation Division under the provisions of Section 41-1713(1), Montana Safety Act, is vested with full power and jurisdiction over, and shall have such supervision of every employment and place of employment in this state (Montana) as may be necessary to enforce and administer all laws and all lawful orders requiring such employment and places of employment to be safe and requiring the protection of the life and safety of every employee in such employment or place of employment. (See Appendix II)

C. The Bureau of Safety and Health is established under the provisions of Section 41-1713(2), Montana Safety Act, and Executive Reorganization Act of 1971. (See Appendices II, III and IV)

D. It is the duty and responsibility of the Bureau of Safety and Health to plan, organize, supervise, enforce, coordinate and adopt Occupational Safety and Health standards for the state of Montana as defined by the Federal Occupational Safety and Health Act of 1970 including:

(1) The responsiblity for Occupational Safety and Health functions such as obtaining field personnel, providing or securing technical and operational services, adopt standards, codes, or rules; conducting safety and health surveys, compliance inspections, investigations, determining degree of safety and health hazards at selected work places by means of field studies and/or sampling methods; consulting and cooperating with federal, other state agencies, and other interested persons or groups relative to Occupational Safety and other interested persons or groups relative to Occupational Safety and Health issues.

(2) Entering into contracts, agreements, obtaining funds or grants from sources permitted by state or federal laws.

1.3 State Plan Implementation Timetable.

	A. Item	Implemented Date
(1)	Montana U. S. Department of Labor Agreement and Designation of State Agencies	April 1, 1971
(2)	Effective Date of OSHA	April 29, 1971
(3)	Request for Occupational Safety Grant ($90,264.00)	May 1, 1971
(4)	Request for Concurrent Inspection	August 5, 1971
(5)	First Occupational Safety Field Survey (Agriculture)	August 23, 1971
(6)	Request for Occupational Health Grant ($42,211.00)	September 21, 1971
(7)	Request for Occupational Safety Fire Grant ($32,278.00)	September 29, 1971
(8)	Preparation of Indices Form	October 15, 1971
(9)	Revision of Inspection Reports	December 6, 1971
(10)	Preparation of Citation Forms	December 13, 1971
(11)	Adoption of Federal Occupational Safety and Health Standards (Advisory)	December 6, 1971
(12)	Executive Reorganization	December 13, 1971
(13)	Submission of Intent to Prepare Plan	December 14, 1971
(14)	Analysis of Fatal Accidents (Agriculture)	December 15, 1971
(15)	Analysis of Fatal Accidents (Sawmills)	December 20, 1971
(16)	Analysis of Fatal Accidents (Logging)	December 20, 1971
(17)	Occupational Safety and Health Training Manual	January 10, 1972

Item	Implemented Date
(18) First Occupational Health Field Survey (Petroleum)	January 12, 1972
(19) Preliminary Preparation of Occupational Safety and Health Operations Manual	January 17, 1972
(20) Analysis of Industries by Standard Industrial Classification	January 25, 1972
(21) Redesignation of State Agency	February 14, 1972
(22) Inspection Frequency Study	February 14, 1972
(23) Legal Review of Occupational Safety and Health Program	February 17, 1972
(24) Nominations to Standards Adoption Advisory Council	February 24, 1972
(25) First Student (Wilcox) to Attend Basic CSHO School	February 29, 1972
(26) Rough Draft of MOSHA to Denver	March 16, 1972
(27) Second, Third and Fourth Draft of MOSHA	March 23 through April 26, 1972
(28) Governor's Appointment of Standards Adoption Advisory Council	April 26, 1972
(29) Second Student (Jameson) to Attend Basic CSHO School	May 2, 1972
(30) Third Student (Rafferty) to Attend Basic CSHO School	May 9, 1972
(31) Workmen's Compensation Division and Department of Health Environmental Services Preliminary Meeting Regarding Duties and Responsibilities	May 30, 1972
(32) Start Phasing Out OSHA Meetings; 87 Conducted - 3,965 Attendance	May 31, 1972
(33) First Meeting of Standards Adoption Advisory Council	June 1, 1972
(34) First Draft, State Plan	June 1, 1972

	Item	Implemented Date
(35)	Review of Second Draft State Plan with Curtis Foster and Stan Reno	June 8, 1972
(36)	Second Meeting of Standards Adoption Advisory Council	June 19, 1972
(37)	First Meeting of Subcommittee (Political Subdivisions) of Standards Adoption Advisory Council	June 19, 1972
(38)	Review of Third Draft State Plan with Curtis Foster, Stan Reno and Charles Boyd	June 21, 1972
(39)	Meeting with Representative from WCD, HES and OSHA. Informal Agreement on Services Provided by HES (Lab Services and Technical Assistance)	June 23, 1972
(40)	Second Meeting of Subcommittee (Political Subdivisions) of Standards Adoption Advisory Council	June 29, 1972

Some of the Following Items will be dependent on 50-50 Federal Funding

	B. Item	Planned Implementation Date
(1)	Formal Submission of State Plan	July 15, 1972 (DEADLINE) September 14, 1972
(2)	Hiring and Training of Additional Compliance Officers	After July, 1972
(3)	Submission of MOSHA to Governor's Executive Reorganization Attorneys for Approval	November 10, 1972
(4)	Submission of MOSHA to Legislative Council; Bill Draft Service for Approval	December 1, 1972

	Item	Planned Implementation Date
(5)	Recruit Bipartisan Employer/Employee Support of MOSHA	December,, 1972
(6)	Public Hearing on Adoption of Standards Promulgated Under Section 6 of the Act	Sometime during Period December, 1972, thru April, 1973
(7)	Introduction of MOSHA to 43rd Legislative Assembly	January 5, 1973
(8)	Passage of Proposed MOSHA	March, 1973
(9)	Addition of First Branch Workmen's Compensation Division Safety and Health Office	Sometime during period May - July, 1973
(10)	Formation of MOSHA Review Commission	July 15, 1973
(11)	Formal Adoption of the New Federal Standards by the State of Montana and Revocation of Existing Montana Standards	August 1, 1973
(12)	Effective Date and Enforcement of New Standards	November, 1973
(13)	Date of Formal Adoption of 29 CFR-Parts 1903, 1904, and 1905 as Rules and Regulations	August 1, 1973
(14)	Addition of Second Branch Workmen's Compensation Division Safety and Health Office	During Period January - March, 1974
(15)	End of Developmental period for State Plan and Transition into Period of Continuing Evaluation by Assistant Secretary of Labor	November, 1975
(16)	Montana Assumes Full Authority and Responsibility for Occupational Safety and Health	January, 1977

1.4 Coverage of political subdivisions. All employees of state, county and city government will be provided with an Occupational Safety and Health program that is equal to the program for all other employees in Montana.

1.5 Further studies are necessary by the Workmen's Compensation Division to formulate a safety and health program for state, county and city employees. Preliminary progress has been the appointment of a subcommittee to the Safety and Health Standards Adoption Advisory Council. The subcommittee will study and review the Federal standards and make recommendations regarding adoption of the standards.

1.6 The subcommittee consists of the following membership:

A. Chairman - Representing state government - from Highway department. (Member of Standards Advisory Council).

B. State Government:
    (1) Representative from the Department of Natural Resources
    (2) Employee representative from the Highway Department (truck driver).

C. County Government:
    (1) County Commissioner from Gallatin County
    (2) Employee representative from Cascade County Surveyor's office.

D. City Government:

(1) City manager from Helena.

(2) Employee representative from Billings Traffic Department.

1.7 Grant Request and Timetable. Findings of the subcommittee will be studied and also be used for justification for the application of a 90-10 grant request. Tentative dates are as follows:

90-10 Grant Request	January, 1973
End of Study Period	October, 1973
Implementation Date for Enforcement of Political Subdivisions	March, 1974

MONTANA DEVELOPMENTAL PLAN FOR
OCCUPATIONAL SAFETY AND HEALTH

PART II - STANDARDS, CODES, RULES AND REGULATIONS

2.0 General. The development of Safety and Health Standards in specified industries is by the concensus method which those holding diverse views (employers and employees) have had an opportunity to reach "substantial agreement" on its development. National concensus and Federal Standards are used for guidance, and if applicable, are contained and adopted as "specification standards". Specific "performance standards" are adopted to provide employers and employees with how to perform or how not to perform certain specific operation procedures or methods.

2.1 Existing Montana standards were developed for major high risk industries because of historically high loss rates and high and severe injury experience.

2.2 The Division of Workmen's Compensation under the provisions of Section 41-1727 (1) (See Appendix V) Montana Safety Act, shall have the power to promulgate, amend, repeal and enforce rules for the prevention of accidents to be known as "Safety Codes" in every employment and place of employment. The Division may appoint advisory committees, to deal with specified industries, composed of equal number of employers and employees and others to suggest safety codes or amendments thereto. All codes and all amendments thereto and repeals thereof shall take effect thirty (30) days after certified copies thereof shall be filed in the office of the Secretary of State.

2.3 The Division, on June 1, 1972, commenced formal procedures under Section 41-1727, (See Appendix V) Code-Making Power, Montana Safety Act, for the purpose of adopting the Federal Standards as contained in Title 29, Chapter XVII, Part 1910 and 1926 - Occupational Safety and Health Standards.

A. The only issues that Montana does not wish to assume enforcement responsibilities are contained in a portion of 29 CFR, Part 1910 and are as follows:

(1) § 1910.13, Shiprepairing
(2) § 1910.14, Shipbuilding
(3) § 1910.15, Shipbreaking
(4) § 1910.16, Longshoring

B. The issues that Montana intends to assume enforcement responsibilities are as follows:

(1) 29 CFR, Part 1910

Subpart B - Adoption and Extension of Established Federal Standards. Include only § 1910.11 and § 1910.12.

Subpart D - Walking--Working Surfaces

Subpart E - Means of Egress

Subpart F - Powered Platforms, Manlifts and Vehicle Mounted Work Platforms

Subpart G - Occupational Health and Environmental Control

Subpart H - Hazardous Material

Subpart I - Personal Protective Equipment

Subpart J - General Enviromental Controls

Subpart K - Medical and First Aid

Subpart L - Fire Protection

Subpart M - Compressed Gas and Compressed Air Equipment

Subpart N - Materials Handling and Storage

Subpart O - Machinery and Machine Guarding

Subpart P - Hand and Portable Powered Tools and other Hand-Held Equipment

Subpart Q - Welding, Cutting, and Brazing

Subpart R - Special Industries

Subpart S - Electrical

(2) 29 CFR, Part 1926 (Formerly 29 CFR 1518 as adopted by 29 CFR 1910.12)

Subpart C - General Safety and Health Provisions

Subpart D - Occupational Health and Environmental Controls

Subpart E - Personal Protective and Life Saving Equipment

Subpart F - Fire Protection and Prevention

Subpart G - Signs, Signals, and Barricades

Subpart H - Materials Handling, Storage, Use and Disposal

Subpart I - Tools (Hand and Power)

Subpart J - Welding and Cutting

Subpart K - Electrical

Subpart L - Ladders and Scaffolding

Subpart M - Floors and Wall Openings, and Stairways

Subpart N - Cranes, Derricks, Hoists, Elevators and Conveyors

Subpart O - Motor Vehicles, Mechanized Equipment and Marine Operations

Subpart P - Excavations, Trenching, and Shoring

Subpart Q - Concrete Forms and Shoring

Subpart R - Steel Erection

Subpart S - Tunnels and Shafts, Caissons, Cofferdams and Compressed Air

Subpart T - Demolition

Subpart U - Blasting and Use of Explosives

Subpart V - Power Distribution and Transmission Lines

Subpart W - Recording and Reporting Work Injury Frequency and Severity Data and Accidents Costs

B. The Division shall adopt, amend or repeal applicable standards as they are adopted and promulgated by the Assistant Secretary of Labor.

C. In order to adopt standards, the Workmen's Compensation Division shall use the following procedure:

(1) Accept nominations for council members (equal representation from employee and employer group).

(2) Screen nominations and recommend members.

(3) Members are approved and appointed by the Governor.

(4) The council meets at designated times to examine and adopt standards.

(5) Public hearings are held to afford all persons with the opportunity of participating.

(6) Adopted standards are published and take effect after being duly filed in the office of the Secretary of State. (See Appendix V)

2.4 Different Products Standards. It is not anticipated that Montana will encounter the need for different products standards because of compelling local conditions. Different products standards will not be promulgated by the Workmen's Compensation Division.

2.5 Timetable. Formal adoption of the Federal Standards specified in § 2.3 of this Part will be final during the period of December, 1972 through April, 1973. Standards updating will remain consistent with those orders issued by the Assistant Secretary of Labor.

PART III - PENALTIES - INSPECTIONS - ENFORCEMENT

3.0 Penalties. Refer to the proposed MOSHA, (Section 26). All civil penalties are the equivalent of the Federal Act.

3.1 Inspections. Procedures are set forth in Attachment II, (MOM, Chapter V).

3.2 Enforcement. (See Attachment II, Chapter IV and V of MOM and also proposed MOSHA Attachment I).

The Montana Safety Act will be maintained, until the proposed MOSHA is enacted, in order to continue to provide the Workmen's Compensation Division with the following provisions:

41-1718 - Red Tag (See Appendix VI)

41-1720 - Closure Order (See Appendix VII)

41-1730 - Misdemeanor Clause (See Appendix VIII)

3.3 Right of Entry. See proposed MOSHA (Attachment I)

3.4 Timetable. All rules of procedure will be established during the period of May through July of 1973, prior to the effective date (August 1, 1973) of proposed MOSHA.

PART IV - STAFFING NEEDS

4.0 Compliance Production.

A. Current Production. During the period of January 1 through June 30, 1972, nine compliance officers worked out of the Helena office and have averaged four major activities per week. These were mainly inspections using state standards on a mandatory basis and OSHA standards on an advisory basis. Other activities that have received considerable attention were investigations of serious injuries, fatalities, catastrophies and employee complaints.

B. Future production will remain about the same per man. In order to perform compliance activities in all work places in Montana, staffing must be increased as indicated in § 4.2 of this Part.

4.1 Because of the vastness of the state, greater and more efficient compliance activity will result with decentralization. The state will be divided into three sections with boundaries based on county lines. (See Appendix IX) It is proposed that during 1973 and 1974, two branch offices will be opened, one each in Missoula and Billings while retaining the Helena office as the central administrative and compliance office. Each Workmen's Compensation Division branch office will be staffed by three compliance officers, one compliance supervisor and one clerk typist.

4.2 The present and projected number of compliance and administrative personnel who will be required is as follows:

Position Title	Personnel Requirement	FY 72/73	FY 73/74	FY 74/75
Commissioner of Labor and Industry	10%	1	1	1
Administrator of Workmen's Compensation Division	25%	1	1	1
Ass't. Administrator of Workmen's Compensation Division	10%	1	1	1
Chief Accountant	10%	1	1	1
Information and Education	40%	1	1	1
Chief, Bureau of Safety and Health	100%	1	1	1
Ass't. Chief, Safety	100%	1	1	1
Ass't. Chief, Health	100%	1	1	1
Ass't. Chief Compliance	100%	1	1	1
Compliance Supervisor	100%	1	1	1
Standards Supervisor	100%	1	1	1
Training Supervisor	100%	1	1	1
Ass't. Compliance Supervisor	100%	2	4	6
Health Compliance Officer	100%	1	4	6
Safety & Health Compliance Officer	100%	15	21	27
Standards Officer	100%	1	2	2
Training Officer	100%	1	2	3

Position Title	Personnel Requirement	FY 72/73	FY 73/74	FY 74/75
Accountant	100%	1	1	1
Hearings Examiner	100%	0	1	1
Coding Clerk	100%	1	1	1
Court Reporter	100%	0	1	1
Secretary	100%	2	3	3
Clerk-Typist	100%	4	6	8
TOTALS (includes only 100% Personnel)		34	53	66

A. The following are job descriptions:

(1) COMMISSIONER OF LABOR AND INDUSTRY - Administrates all state agencies dealing with labor and industry including Employment Security, Workmen's Compensation, and Labor Compliance programs.

(2) ADMINISTRATOR, WORKMEN'S COMPENSATION DIVISION - Responsible for the overall administration of the Workmen's Compensation Division and Occupational Safety and Health.

(3) ASS'T ADMINISTRATOR - Maintains general administrative control for the administrator.

(4) CHIEF ACCOUNTANT - In charge of all accounting matters of the Workmen's Compensation Division.

(5) INFORMATION AND EDUCATION - Supervises all media and public information activities relative to OSHA and MOSHA operations, and implementation, including press, radio and television announcements, video tape training

films and special statewide events.

(6) CHIEF OF BUREAU OF SAFETY AND HEALTH - Oversees the varied activities of the Bureau of Safety and Health, and coordinates the reports of all Sections within the Bureau to achieve the greatest amount of occupational safety and health compliance possible.

(7) ASS'T CHIEF, SAFETY - Assists the Bureau Chief in administrative matters concerning the Bureau.

(8) ASS'T CHIEF, HEALTH - Oversees the Occupational Health section activities, and assists the Bureau Chief.

(9) ASS'T CHIEF, COMPLIANCE - Oversees the compliance section and assists the Bureau Chief.

(10) COMPLIANCE SUPERVISOR - Makes assignments to compliance officers; oversees their activities and develops compliance programs.

(11) STANDARDS SUPERVISOR - Keeps informed on changes and additions with respect to present and new standards; advises and keeps the Bureau of Safety and Health informed.

(12) TRAINING SUPERVISOR - Coordinates, assigns in and out-service training activities; develops courses and course materials.

(13) ASS'T COMPLIANCE SUPERVISOR - Assigns compliance duties to area offices; inspects

and makes investigations.

(14) HEALTH COMPLIANCE OFFICER - Collects samples necessary to determine industrial health problems in industry and performs compliance duties with regard to occupational health.

(15) COMPLIANCE OFFICER - Inspects establishments and conducts investigations for compliance program.

(16) STANDARDS OFFICER - Assists standards supervisor in the development of standards programs.

(17) TRAINING OFFICER - Performs in and out-service training activities.

(18) ACCOUNTANT - Performs budget and accounting duties for the Bureau of Safety and Health.

(19) HEARINGS EXAMINER - Hears cases regarding contested compliance material.

(20) CODING CLERK - Performs duties, under the supervision of the statistical department, necessary to compile statistical data with regard to compliance activities.

(21) COURT REPORTER - Records proceedings at Hearings.

(22) SECRETARY - Assists the Chief of Bureau and Assistant Chiefs; performs coordinating, administrative office duties.

(23) CLERK-TYPIST - Types, files, faxes and performs related office work necessary to maintain necessary Bureau records.

4.3 Merit System.

A. The Merit System Council, after legislative approval of MOSHA, will service all employees of the Workmen's Compensation Division. The authority for this service is cited in Section 20, page 42, of MOSHA. The rules and regulations of the Merit System Council are in conformance with the Standards for a Merit System of Personnel Administration, 45 CFR, Part 70, issued by the Secretary of Labor, including any ammendments thereto, and any standards prescribed by the U. S. Civil Service Commission pursuant to Section 208 of the Intergovernmental Personnel Act of 1970 (P.L. 91-648; 84 Stat. 1915) modifying or superseding such standards. It was necessary for the Merit System Council to meet Federal requirements so that six other state agencies, now operating under the Merit System, could participate in Federal funding. These six agencies are, the Employment Security Commission, Civil Defense Division, Mental Health Division, Surplus Property Division of Public Instruction, Health and Environmental Sciences, and the Department of Social Rehabilitation Service.

B. The Workmen's Compensation Division will be assured of qualified safety, health and training personnel through the implementation of the Merit System Council.

Job descriptions will apply to all positions. Employees will be required to take a test for each position. The University System in Montana will be a major source for qualified personnel. Skills and crafts personnel will basically be obtained from union sources.

PART V - SELECTION AND ASSIGNMENT OF INDUSTRIES

5.0 Safety Compliance Workload Distribution and Priorities.

1st Priority	Catastrophe, fatality and/or serious injury investigation	30%
2nd Priority	Complaint investigation	10%
3rd Priority	Target Industry Program(TIP)	45%
4th Priority	General inspection and related activities	15%

A. Montana Target Industries have been selected from accumulated division records indicating their high risk category. Periodic adjustment will be made as the Bureau of Labor Statistics and Workmen's Compensation Division Statistics Section indicate These five categories involve 18 percent of Montana's working employees. (See Appendix X)

B. Compliance officers will be assigned basically a target industry or high risk category which will be their primary responsibility. Each compliance officer will be assigned additional lower risk industries to fill the void when many of the target and high risk industries terminate their activities because of seasonal conditions or work is curtailed. (See Appendix XI)

C. General industry (non-target) coverage which accounts for 82 percent of Montana's employees, is in the developmental stage. Some study has been conducted regarding general industries and it was determined that degrees of risk would have to be assigned to general industries. Inspection priorities regarding general industries will be assigned according to degree of risk.

5.1 Timetable. Additional studies will be made to assure adequate coverage of all industries. This plan will be implemented by August, 1974.

PART VI - COMPLAINTS

6.0 Response: Compliance officer responds to all complaints and performs a complete inspection of the establishment if deemed advisable. The complaintant is advised of the outcome if it is required or requested.

A. All complaints are acted upon if there is a safety or health issue involved.

6.1 Complaints are not acted upon if any employment or place of employment is in an unsafe condition on the basis of the number or qualifications of employees operating equipment in such work places, unless a specific standard or rule is, or has been, violated.

6.2 Specific procedure on handling complaints has been written under Chapter VI of the MOM (see Attachment II).

6.3 Timetable: MOM will be implemented as official rules and procedures prior to the proposed MOSHA becoming law, August 1, 1973.

PART VII - TRAINING

7.0 In-Service Training. The current program consists basically of weekly two-hour sessions, conducted by the Standards Supervisor, with major emphasis on the following:

29 CFR Standards 1910 and 1926

29 CFR Standards Updating

29 CFR Standards Interpretations

A. The Compliance Supervisor also conducts weekly one-hour sessions that cover:

   (1) Individual Assignments

   (2) Occasional Critique of Previous Compliance Problems

   (3) Operational Procedures and Reports

B. Other specific subjects are required for compliance officers, e.g.: fire fighting equipment requirements, electrical, testing equipment, rigging and explosives.

C. A training program schedule has been started to send all compliance personnel to Basic CSHO School in Chicago, Illinois. All existing and new safety and health compliance personnel will complete this schedule and any or all other applicable courses offered by OSHA and NIOSH prior to any actual enforcement of standards.

7.1 Out-Service Training. The training supervisor is responsible for this program. All out-service training will be solely conducted by training personnel rather than compliance personnel as in the past. This service will be conducted on a "group type" basis rather than individual basis and will be conducted on neutral grounds such as union halls, training and meeting rooms, Workmen's Compensation Division offices, etc. All course material will be compatible with OSHA standards. Specific programs are now being designed from U. S. Department of Labor OSHA Construction Training manuals and slides. Future programming, with emphasis on high risk industries, will include such information as employee exposure to hazardous materials, preventive measures, symptoms, injury treatment and will also include the use and wearing of protective devices and/or equipment.

A. Services provided as follows:

(1) Service

MOSH Meetings

MOSH Courses for Employees or Supervisors

Safety and Health Standards

First Aid Courses

Pre-Construction Meetings

Safety Surveys

Demonstrations

TV and Video-Tape Programs

(2) Recipients of Service

Employees

Employers

Unions

Associations, and other interested groups

B. Printed Material:

(1) Grant requests may be submitted to the Assistant Secretary of Labor in order to provide an adequate supply of infomational material, specific industry requirements, etc. There is an immediate need in this area to help promote voluntary compliance.

7.2 Timetable:

A. In-service. Portions of this OSHA oriented program are well under way and will be completely developed in 1973, after the proposed MOSHA is passed and the Merit System is implemented.

B. Out-service. The training supervisor will work closely with the Assistant Secretary of Labor to insure that this program is complete at the end of the three year developmental period, probably January of 1976.

State of Montana

State Department of Health
and Environmental Sciences
HELENA, MONTANA 59601

JOHN S. ANDERSON M.D.
Director

RECEIVED
JUN 28 1972
WORKMEN'S COMPENSATION
DIVISION

7

June 26, 1972

J. J. Carden, Administrator
Workmen's Compensation Division
Department of Labor and Industry
815 Front Street
Helena, MT 59601

Dear Mr. Carden:

The Department of Health and Environmental Sciences has elected to enter into no agreement with the U. S. Department of Labor to perform radiation inspections under the Federal Occupational Safety and Health Act. The Department of Health and Environmental Sciences will continue its existing radiological health program in Montana. Radiation control regulations promulgated and standards adopted under our 1967 Radiation Control Act include all OSHA requirements for radiation control. Our current radiation control program is far more encompassing and has more stringent regulations than required by the Occupational Safety and Health Act, thus resulting in better radiation control.

The Department of Health and Environmental Sciences Radiation Control Program is coordinated by a Health Physicist who has a Master's Degree in Radiological Health and who has had nine years experience in Public Health and Nuclear Reactor Radiation Control work.

The Department will continue to employ an industrial hygienist who will be paid solely by the Department. This industrial hygienist will be available to the Workmen's Compensation Division on a day-by-day consultant basis. The Workmen's Compensation Division will be charged a consultant fee for each use of this industrial hygienist.

The Department of Health and Environmental Sciences will employ an additional chemist at the Department's expense and will perform all laboratory services required by the Workmen's Compensation Division on a "per test" fee schedule to be arranged.

Respectfully,

John S. Anderson, M.D.
Director

JSA:LLL:mrc

PART VIII - WORKMEN'S COMPENSATION DIVISION, OCCUPATIONAL HEALTH

8.0 Basic inspection procedures and requirements are the same as for safety (see MOM) with the following exceptions: sampling of the environment and sample analysis will be part of the total inspection procedure. (See Chapter XIII, MOM, Attachment II)

A. Occupational health needs have been determined by health surveys. Summaries of these surveys are listed in § 13.6 of Part XIII.

8.1 Inspections. Inspection priorities would be approximately as follows:

A.	First Priority - Catastrophe and/or fatality investigations.	5%
B.	Second Priority - Complaint investigations and inspections initiated by feed-back from compliance officer inspections.	20%
C.	Third Priority - Inspections of target health hazard industries and other potentially hazardous industries. Priorities assigned to the industries that have been surveyed would fall under this heading.	50%
D.	Fourth Priority - Inspections of Industries with low occupational health hazards based on health survey data.	25%

Occupational health hazard priorities have been assigned by data from surveys and from the number of people exposed. In the area of auto repair or gasoline service stations, the inspections can be selective by feed-back from safety compliance officers.

Assuming that an industrial hygienist can make 100 inspections a year, a minimum of six field men would be needed during the developmental period 1972 - 1975. It would be desirable to cover third priority industries at least annually with less frequency coverage on lower priorities.

Compliance operations regarding industrial hygiene and occupational health are being adopted from Chapter XIII of the MOM.

Inspections will be both self initiated, and will result from compliance officers recognition of potential occupational health problems. The annual number of inspections is estimated to be 100 per man. (These figures will be subject to change as further information is acquired). With the inclusion of agriculture and an occupational health program for state agencies, a substantial change may be required.

8.2 Staffing.

A. Present: One industrial hygienist. One Health compliance officer has been hired to aid in survey work for the planning grant period.

B. Proposed: For the on-going program, a total of two (2) industrial hygienists and six (6) occupational health compliance officers will be required.

C. Type: Six (6) health compliance officers and two (2) industrial hygienists. Also, one clerk-stenographer.

D. Schedule of Hiring: One industrial hygienist - January, 1972. One health compliance officer - February, 1972. One industrial hygienist and two (2) compliance officers (Health) during fiscal year 1974. Three (3) compliance officers (Health) for fiscal year 1975. One clerk-stenographer during fiscal year 1974.

E. Job Descriptions: (See Attachments C-1, C-2, C-3 at the end of this Part VIII.)

8.3 Training. Approximately two weeks out of state training per man per year for compliance officers (Health) and industrial hygienists is provided for in the budget.

This training will consist of sampling procedures and recognition of Occupational Health problems. Provisions will be made for having NIOSH provide for in-state training for both safety and health field people in sampling techniques and in recognition of occupational health hazards. The chief chemist or the person directly involved in laboratory analysis of occupational health samples will be provided with two or three weeks on the job training in the Salt Lake Western area occupational health laboratory. Plans are for the industrial hygienist to attend a twelve (12) week industrial hygiene course in Oklahoma and for all occupational health people to attend the four (4) week OSHA course in Chicago. Professional meetings and seminars will be attended as needed.

Education sessions are being conducted throughout the state for industries regarding information on safety and health standards, procedures, recordkeeping etc; this is provided for in the proposed Montana Occupational Safety and Health Act of 1973.

8.4 State, City, and County Coverage. An occupational health program similar to that for industry will be carried out as set forth in the proposed Montana Occupational Safety and Health Act of 1973, except for monetary penalties.

8.5 Liaison with Department of Health and Environmental Sciences. Occupational health activities may be coordinated with the Department of Health and Environmental Sciences in order to maintain a more effective program. Laboratory facilities that the Health Department presently has, will be utilized. Alternate laboratory facilities are; 1. University of Montana Chemistry Department, 2. Montana State University Chemistry Department, 3. Private Laboratory, 4. NIOSH facilities at Salt Lake City.

A. Personal qualifications. Job qualifications for Health Department chemistry laboratory staff are listed under Attachment C-4 at the end of this Part VIII.

B. Some calibration of sampling equipment could be done in the Health Department until such time as equipment and room can be obtained in the Bureau of Safety and Health. The Salt Lake City Field Station Laboratory can also be utilized in calibration and sample analysis. We have budgeted for calibration equipment as it is important that we do our own primary calibration.

C. The expertise of personnel in the Health Department concerning occupational health may be utilized for technical assistance on a contract basis.

8.6 Space for Workshop and Equipment. The Workmen's Compensation Division will need a work area for cleaning glassware (see budget request), sample filter weighing, and some cabinet space for storage of a few necessary chemical reagents; hot and cold water, and a sink will be needed along with a deionization column to obtain the equivalent of double distilled water. A balance will be needed for weighing filter media before and after sample collection. This would be minimum equipment needed to have the capability of preparing sampling solutions or medias. Calibration of sampling equipment should be done in this department as we need this capability for ourselves for efficiency and confidence in our equipment.

With laboratory analysis of samples being done in the Department of Health Industrial Hygiene laboratory, and in some cases in the Salt Lake Industrial Hygiene laboratory, and with an adequate supply of sampling equipment and workspace, we will have the capabilities to start an on-going program (1973-1975) concerning inspections and sampling in occupational health.

8.7 Proposed Budget. Fiscal 1972-1973 will be in the proximity of $45,777. This (Health) figure is included in the total budget of the Bureau of Safety and Health contained in Part XI; as are the projected Fiscals 1973-1974 and 1974-1975 proposed budgets.

6/28/72

CLASS CODE: ____________ CLASS GRADE: ____________

CLASS TITLE: (INDUSTRIAL HYGIENIST) II

1. DEFINITION OF THE CLASS: (Scope of Job) Under general supervision assists in carrying out a statewide program of occupational health. Makes inspections and conducts surveys of industrial and other work sites for the purpose of assessing and controlling occupational health and safety hazards in employment covered by industrial insurance and does related work as required.
2. MINIMUM QUALIFICATIONS:

3. EDUCATION AND EXPERIENCE: Baccalaureate degree in a natural or physical science (chemistry, physics, biological science) or chemical, mechanical, or civil engineering; and five years experience in occupational health inspections or programs.

4. KNOWLEDGE, SKILLS AND ABILITIES: Knowledge of: current principles, practices and developments in the field of Occupational Safety and Health; sampling and measuring techniques for industrial contaminants such as dust, gas, vapor, radiation, chemicals and their by-products, or conditions of inadequate lighting, noise, temperature extremes, etc., dangerous to human health and safety; routine laboratory procedures. Ability to: identify and quantify health hazards in an industrial environment; conduct and coordinate survey data; communicate effectively, orally, and in writing and work harmoniously with management and labor; make sound decisions and take effective action.

5. EXAMPLES OF DUTIES: Vists a variety of work sites such as mechanical, chemical, or industrial manufacturing plants, garages, offices or field employment sites to assess the degree to which Occupational Safety and Health hazards or environmental contamination might exist; interviews employers and workers; takes samples of liquids, dusts, air and industrial waste materials and by-products; measures noise, temperature, air flow and other conditions; submits physical samples for laboratory analysis and participates in analysis and experiments; recommends alteration of plant or of procedures as indicated where conditions warrant: advises management and labor of agency safety and health rules: makes followup inspections to assure compliance: in case of imminent danger or hazard, issues shutdown orders pending final determination. Assists in the planning and directing of a statewide program of occupational health which is in agreement with the U. S. Department of Labor, and performs other duties in Industrial Hygiene as may be necessary.

6/28/72

Class Code: ____________________ Class Grade: ______

Class Title: Compliance Officer (Health)

1. DEFINITION OF THE CLASS: (Scope of Job) Under general supervision, assists in carrying out a compliance program in occupational health. Makes inspections and carries on sampling as needed to achieve compliance in occupational health and does related work as required.

2. MINIMUM QUALIFICATIONS:

3. EDUCATION AND EXPERIENCE: High school education with two years background in safety and/or occupational health.

4. KNOWLEDGE, SKILLS AND ABILITIES: The ability to recognize occupational health problems and, with training, to evaluate these problems, and to sample and measure for industrial contaminants. To communicate clearly and concisely, and to use diplomacy and tact when needed.

5. EXAMPLES OF DUTIES: Inspects any worksites that may have an occupational health problem; takes samples of liquids, dusts, gases, mists in the occupational environment and measures noise, temperature, airflow, and other conditions pertaining to occupational health. Makes followup inspections to assure compliance and performs any other duties as may be necessary

6/28/72

CLASS CODE:__________________ CLASS GRADE: ____________

CLASS TITLE: (INDUSTRIAL HYGIENIST) I

1. DEFINITION OF THE CLASS: (Scope of Job) Under general supervision, assists in carrying out a compliance program in occupational health. Makes inspections and carries on sampling as needed to achieve compliance in occupational health. Helps oversee compliance officers (health) and does related work as required.

2. EDUCATION AND EXPERIENCE: Baccalaureate degree in a natural or physical science (chemistry, physics, biological science) or chemical, mechanical, or civil engineering.

3. KNOWLEDGE, SKILLS, AND ABILITIES: Knowledge of general principles and development in Occupational health and, with training, to obtain techniques for sampling and measuring of industrial contaminants. The ability to communicate effectively orally and in writing, and work harmoniously with management and labor.

4. EXAMPLES OF DUTIES: Inspects a variety of work places, such as mechanical, chemical, or industrial plants to determine compliance with the Occupational Safety and Health program. Oversees sampling program for occupational health to insure that procedures are correct. With training, serves as a backup for Industrial Hygienst II. Performs any duties in Occupational Health as may be necessary.

6/28/72

QUALIFICATIONS OF PERSONNEL

MONTANA STATE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
LABORATORY DIVISION COGSWELL LABORATORY BUILDING HELENA

Chief, Chemistry Laboratory Bureau

Education : Carbon County High School, Red Lodge, Montana, Grad. May 1929 Montana State College, Bozeman, Montana, B.S. June 1933 Major in Chemistry.

Experience : Chemist, Department of Health and Environmental Sciences, March 1934 to present (38 years and 2 months) Includes chemistry and bacteriology of drinking water supplies, industrial hygiene and occupational health, sampling in mines, and food and drug work.

Professional affiliation: American Industrial Hygiene Association

Chemist II, Chemistry Laboratory Bureau

Education : Butte Public High School, Grad. June 1961
Montana School of Mines September 1961 - Feb. 1963
University of Montana B.A. June 1967 Major in Chemistry
University of Montana Sept. '67 - Dec. '67 9 credits of graduate work in chemistry.

Experience : Chemist, Dept. of Health and Environmental Sciences, 1968 to present (3½ years)
Teaching assistant and chemistry technician for University of Montana and Anaconda (2 years) Course on Water analysis in Cincinnati

Professional Affiliation: American Chemical Society

Chemist II, Chemistry Laboratory Bureau

Education : Billings West High School, Grad. June 1965
University of Montana B.S. March 1970
Major in Chemistry

Experience : Chemist, Department of Health and Environmental Sciences two years.

Chemist I, Chemistry Laboratory Bureau

Duties : Examines and chemically analyzes foods and food products, drugs, water, beverages, poisons, environmental and clinical materials, and other specimens submitted for analyses; prepares reagents and solutions, standardizes techniques and procedures for analyses; operates a variety of specialized physical and chemical testing equipment and machinery. Collects samples in the field for laboratory analyses. Keeps records of analyses and prepares reports.

Requirements : Graduation from an accredited college or university with a major in chemistry.

Examination: Written test, 70%; training and experience, 30%; The written test covers some knowledge of analytical, physical and organic chemistry, some knowledge of the application of standard laboratory techniques the use of standard laboratory equipment, and the preparation and standardization of reagents and solutions.

Probationary Period: Nine months.

Continuous Recruitment: Applications will be accepted until further notice.

Residence: It is not necessary to be a resident of Montana, but applicants who have lived in the state for at least six months may be given preference in appointments.

PART IX - STATISTICS - RECORDKEEPING

9.0 The state of Montana in conjunction with the Bureau of Labor Statistics will develop a statistical program to;

A. Establish work-injury and illness incident rates to be used in establishing inspection schedules;

B. Establish state target industries;

C. Establish seasonal industry which could only be inspected during certain times of the year;

D. Analyze annual MOSH surveys for three (3) districts within the state.

9.1 Present: Montana is working under a Planning Grant Agreement with the Bureau of Labor Statistics to prepare for the state take over of the statistical program and assist the BLS in the conduct of the 1971 MOSH Survey and preparation for the 1972 MOSH Survey.

9.2 Proposed: Montana will progress to the On-Going Grant stages July 1, 1972. We will then progressively assume more and more of the statistical program and Bureau of Labor Statistics will phase out except for compilation of national data.

9.3 Recordkeeping. It is the intent of the Workmen's Compensation Division to adopt 29 CFR, Part 1904. (Recording and Reporting Occupational Injury and Illness). These rules and regulations, along with all applicable subsections and subsequent amendments, additions or changes issued by the Assistant Secretary of Labor, will be considered for adoption after the proposed MOSHA is passed by the 43rd Legislative Assembly in 1973. There will be appropriate name changes made in the final document that will delegate proper authority and responsibility to the proper agency and/or people. (See § 12.3 of Part XII for a listing of changes that will also be appropriate for this §). Part 1904 is attached at the end of this Part IX.

9.4 Reporting. The Workmen's Compensation Division will assume full responsibility for the collection and compilation of all work-injury and illness statistics as indicated in § 9.0 of this Part, along with periodic compliance activity accumulative reports. Procedures are in the developmental stage and will be compatible with Occupational Safety and Health Administration requirements.

9.5 Timetable. All Workmen's Compensation Division reports will be consistent with the Federal Management Information System (MIS). All formal procedures, including the responsibility to report to the Assistant Secretary of Labor as he requires, will be implemented no later than August 1974.

federal register

FRIDAY, JULY 2, 1971
WASHINGTON, D.C.

Volume 36 ■ Number 128

Title 29—LABOR

Chapter XVII—Occupational Safety and Health Administration, Department of Labor

PART 1904—RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES

On May 11, 1971 notice of proposed rule making was published in the FEDERAL REGISTER (36 F.R. 8693) concerning proposed recordkeeping and reporting under the Williams-Steiger Occupational Safety and Health Act of 1970, concerning occupational injuries and illnesses. After consideration of the relevant material which has been submitted by interested persons, the proposal is hereby adopted with some changes as a new Part 1904 to Title 29 in the Code of Federal Regulations.

Sections 1904.4, 1904.4a, and 1904.8 of the new Part 1904 shall be effective upon publication in the FEDERAL REGISTER, good cause having been found for not providing any further delay in effective date because there is an immediate need for the prompt recording of certain occupational injuries and illnesses and reporting of serious accidents thereunder in order to protect the health and safety of the workers involved. The remainder of the new Part 1904 shall be effective 30 days from its publication in the FEDERAL REGISTER.

The new Part 1904 reads as follows:

Sec.
1904.1 Purpose and scope.
1904.2 Log of occupational injuries and illnesses.
1904.3 Period covered.
1904.4 Supplementary record.
1904.4a Temporary rules.
1904.5 Annual summary.
1904.6 Retention of records.
1904.7 Access to records.
Sec.
1904.8 Reporting of fatality or multiple hospitalization accidents.
1904.9 Initials — falsification — failure to keep records or reports.
1904.10 Recordkeeping under approved State plans.
1904.11 Change of ownership.
1904.12 Definitions.
1904.13 Petitions for recordkeeping exceptions.

AUTHORITY: The provisions of this Part 1904 issued under secs. 8(c)(1), (2), 8(g)(2), and 24(e), 84 Stat. 1599, 1600, 1615; 29 U.S.C. 657, 673.

§ 1904.1 Purpose and scope.

The regulations in this part implement sections 8(c)(1), (2), 8(g)(2), and 24(a) and (e) of the Occupational Safety and Health Act of 1970. These sections provide for recordkeeping and reporting by employers covered under the act as necessary or appropriate for enforcement of the act, for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation, and analysis of occupational safety and health statistics. The regulations in this Part were promulgated with the cooperation of the Secretary of Health, Education, and Welfare.

§ 1904.2 Log of occupational injuries and illnesses.

Each employer subject to the act shall maintain in each establishment, a log of occupational injuries and illnesses. Each employer shall record on the log each recordable occupational injury and illness within 2 working days after receiving information that a recordable case has occurred. Occupational Safety and Health Administration Form OSHA No. 100[1] shall be used for this purpose and shall be completed in the form and detail provided for in the form and the instructions contained therein. The log may be maintained in another manner if approved in accordance with the provisions of § 1904.13.

§ 1904.3 Period covered.

Logs shall be established on a calendar year basis. The initial log shall include recordable occupational injuries and illnesses occurring on or after July 1, 1971.

§ 1904.4 Supplementary record.

In addition to the log of occupational injuries and illnesses provided for under § 1904.2, each employer subject to the act shall maintain at each establishment a supplementary record of occupational injuries and illnesses on which he shall record each recordable occupational injury or occupational illness in the detail prescribed in the instructions accompanying Occupational Safety and Health Administration Form OSHA No. 101. Workmen's compensation, insurance, or other reports are acceptable alternative records if they contain the information required by Form OSHA No. 101. If no acceptable alternative record is maintained for other purposes, Form OSHA No. 101 shall be used or the necessary information shall be otherwise maintained.

§ 1904.4a Temporary rules.

(a) *Explanation.* Copies of the three recordkeeping forms required under this part (OSHA Forms Nos. 100, 101, and 102) may not be available when these rules are published. Specimens of two of these forms were published in the daily issue of the FEDERAL REGISTER on the date of the publication of this part. One of these specimens (OSHA Form No. 101) will, in addition to its intended purpose, be used, as provided below, as an interim method of recording log-type information. The log-type information will later be transferred to the log (Form 100) when copies of that form are generally available either through direct mailing or at the local offices of the Occupational Safety and Health Administration or the Bureau of Labor Statistics.

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[1] Filed as part of the original document.

(b) *Rules.* (1) Pending the availability of OSHA Form No. 101, each employer subject to this part and required to use Form No. 101 by § 1904.4 shall comply with § 1904.4 by preparing records in a manner which is consistent with the specimen of OSHA Form No. 101. The specimen is published in the daily issue of the FEDERAL REGISTER on the date of the publication of this part.

(2) Pending the availability of OSHA Form No. 100, each employer subject to this part shall comply with § 1904.2 by making the records required by subparagraph (1) of this paragraph or § 1904.4, as the case may be, within 2 working days after receiving information that a recordable injury or illness has occurred. When OSHA Form No. 100 becomes available, information concerning recordable occupational injuries and illnesses occurring before such availability and on or after July 1, 1971, shall be transcribed therein from the records maintained under subparagraph (1) of this paragraph or § 1904.4, as the case may be.

§ 1904.5 Annual summary.

(a) Each employer subject to the act shall compile an Annual Summary of Occupational Injuries and Illnesses, based on the information contained in the Log of Occupational Injuries and Illnesses. Occupational Safety and Health Administration Form OSHA No. 102 shall be used for this purpose and shall be completed no later than 1 month after the close of each calendar year (including calendar year 1971) in the form and detail provided for in the form and the instructions contained therein.

(b) The summary shall be maintained at each establishment. Each employer shall post a copy of the summary at each establishment in a conspicuous place where notices to its employees are customarily posted. Each employer shall take steps to insure that such notices are not altered, defaced, or covered by other material.

§ 1904.6 Retention of records.

Records provided for in §§ 1904.2, 1904.4, and 1904.5 shall be retained in each establishment for 5 years following the end of the year to which they relate.

§ 1904.7 Access to records.

Records provided for in §§ 1904.2, 1904.4, and 1904.5 shall be available for inspection and copying by Compliance Safety and Health Officers of the Occupational Safety and Health Administration, U.S. Department of Labor during any occupational safety and health inspection provided for under Part 1903 of this chapter and section 8 of the act, by any representative of the Bureau of Labor Statistics, U.S. Department of Labor, by any representative of the Secretary of Health, Education, and Welfare during any investigation under section 20(b) of the act, or by any representative of a State accorded jurisdiction for occupational safety or health inspections or for statistical compilations under sections 18 and 24 of the act.

§ 1904.8 Reporting of fatality or multiple hospitalization accidents.

Within 48 hours after the occurrence of an employment accident which is fatal to one or more employees or which results in hospitalization of five or more employees, the employer of any employees so injured or killed shall report the accident either orally or in writing to the nearest office of the Area Director of the Occupational Safety and Health Administration, U.S. Department of Labor. The reporting may be by telephone or telegraph. The report shall relate the circumstances of the accident, the number of fatalities, and the extent of any injuries. The Area Director may require such additional reports, in writing or otherwise, as he deems necessary, concerning the accident.

§ 1904.9 Initials—falsification—failure to keep records or reports.

Entries in records maintained pursuant to § 1904.2 shall be signed or initialed by the official or employee responsible for the accuracy of the entry. Section 17(g) of the act provides that "Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this act shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 6 months or by both." Failure to maintain records or file reports required by this part, or in the details required by forms and instructions issued under this part may result in the issuance of citations and assessment of penalties as provided for in sections 9, 10, and 17 of the Act.

§ 1904.10 Recordkeeping under approved State plans.

Records maintained by an employer and reports submitted pursuant to, and in accordance with the requirements of an approved State plan under section 18 of the act shall be regarded as compliance with this Part 1904.

§ 1904.11 Change of ownership.

Where an establishment has changed ownership, the employer shall be responsible for maintaining records and filing reports only for that period of the year during which he owned such establishment. However, in the case of any change in ownership, the employer shall preserve those records, if any, of the prior ownership which are required to be kept under this part. These records shall be retained at each establishment to which they relate, for the period, or remainder thereof, required under § 1904.6.

§ 1904.12 Definitions.

(a) "Act" means the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1590 et seq., 29 U.S.C. 651 et seq.).

(b) The definitions and interpretations contained in section (2) of the Act shall be applicable to such terms when used in this Part 1904.

(c) "Recordable occupational injuries or illnesses" are any occupational injuries or illnesses which result in:

(1) Fatalities, regardless of the time between the injury and death, or the length of the illness; or

(2) Lost workday cases, other than fatalities, that result in lost workdays; or

(3) Nonfatal cases without lost workdays which result in transfer to another job or termination of employment, or require medical treatment (other than first aid) or involve: loss of consciousness or restriction of work or motion. This category also includes any diagnosed occupational illnesses which are reported to the employer but are not classified as fatalities or lost workday cases.

(d) "Medical treatment" includes treatment administered by a physician or by registered professional personnel under the standing orders of a physician. Medical treatment does not include first aid treatment even though provided by a physician or registered professional personnel.

(e) "First Aid" is any one-time treatment, and any followup visit for the purpose of observation, of minor scratches, cuts, burns, splinters, and so forth, which do not ordinarily require medical care. Such one-time treatment, and followup visit for the purpose of observation, is considered first aid even though provided by a physician or registered professional personnel.

(f) "Lost workdays:" The number of days (consecutive or not) after, but not including, the day of injury or illness during which the employee would have worked but could not do so; that is, could not perform all or any part of his normal assignment during all or any part of the workday or shift, because of the occupational injury or illness.

(g) (1) "Establishment:" A single physical location where business is conducted or where services or industrial operations are performed. (For example: a factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities operated from the same physical location as a lumber yard), each activity shall be treated as a separate establishment.

(2) For firms engaged in activities such as agriculture, construction, transportation, communications, and electric, gas and sanitary services, which may be physically dispersed, records may be maintained at a place to which employees report each day.

(3) Records for personnel who do not primarily report or work at a single establishment, such as traveling salesmen, technicians, engineers, etc., shall be maintained at the location from which they are paid or the base from which personnel operate to carry out their activities.

§ 1904.13 Petitions for recordkeeping exceptions.

(a) *Submission of petition.* Any employer who for good cause wishes to maintain records in a manner different from that required by this part may submit a petition containing the information specified in paragraph (c) of this section to the Regional Director of the Bureau of Labor Statistics wherein the establishment involved is located.

(b) *Opportunity for comment.* Affected employees or their representatives shall have an opportunity to submit written data, views, or arguments concerning the petition to the Regional Director involved within 10 working days following the receipt of notice under paragraph (c)(5) of this section.

(c) *Contents of petition.* A petition filed under paragraph (a) of this section shall include:

(1) The name and address of the applicant;

(2) The address of the place or places of employment involved;

(3) Specifications of the reasons for seeking relief;

(4) A description of the different recordkeeping procedures which are proposed by the applicant;

(5) A statement that (i) the applicant has informed his affected employees of the petition by giving a copy thereof to them or to their authorized representative, posting a statement giving a summary of the petition and specifying where a copy of the petition may be examined, at the place or places where notices to employees are normally posted, and by other appropriate means; and that (ii) applicant has in the same manner informed affected employees and their representatives of their rights under paragraph (b) of this section.

(d) *Referrals to Assistant Commissioner.* Whenever a Regional Director receives a petition from an employer having one or more establishments beyond the geographic boundary of his region, or a petition from a class of employers having any establishment beyond the boundary of his region, he shall refer the petition to the Assistant Commissioner for action.

(e) *Additional Notice, Conferences.* (1) In addition to the actual notice provided for in paragraph (c)(5) of this section, the Assistant Commissioner, or the Regional Director, as the case may be, may provide, or cause to be provided, such additional notice of the petition as he may deem appropriate.

(2) The Assistant Commissioner or the Regional Director, as the case may be, may also afford an opportunity to interested parties for informal conference or hearing concerning the petition.

(f) *Action.* After review of the petition, and of any comments submitted in regard thereto, and upon completion of any necessary appropriate investigation concerning the petition, if the Regional Director or the Assistant Commissioner, as the case may be, finds that the alternative procedure proposed will not hamper or interfere with the purposes of the Act and will provide equivalent information, he may grant the petition subject to such conditions as he may determine appropriate, and subject to revocation for cause.

(g) *Publication.* Whenever any relief is granted to an applicant under this Act, notice of such relief, and the reasons therefor, shall be published in the FEDERAL REGISTER.

(h) *Revocation.* Whenever any relief under this section is sought to be revoked for any failure to comply with the conditions thereof, an opportunity for informal hearing or conference shall be afforded to the employers and affected employees, or their representatives. Except in cases of willfulness or where public safety or health requires otherwise, before the commencement of any such informal proceeding, the employer shall: (1) Be notified in writing of the facts or conduct which may warrant the action; and (2) be given an opportunity to demonstrate or achieve compliance.

(i) *Compliance after submission of petitions.* The submission of a petition or any delay by the Regional Director, or the Assistant Commissioner, as the case may be, in acting upon a petition shall not relieve any employer from any obligation to comply with this part. However, the Regional Director or the Assistant Commissioner, as the case may be, shall give notice of the denial of any petition within a reasonable time.

(j) *Consultation.* There shall be consultation between the appropriate representatives of the Occupational Safety and Health Administration and the Bureau of Labor Statistics in order to insure the effective implementation of this section.

Effective date. This part shall become effective 30 days after publication in the FEDERAL REGISTER, except §§ 1904.4, 1904.4a, and 1904.8 which shall become effective immediately on publication in the FEDERAL REGISTER (7-2-71).

Signed at Washington, D.C., this 25 day of June 1971.

J. D. HODGSON,
Secretary of Labor.

OSHA No. 101 Form approved
Case or File No. OMB No. 44R–1453

SUPPLEMENTARY RECORD OF OCCUPATIONAL INJURIES AND ILLNESSES

Employer
1. Name ----------
2. Mail address ----------
(No. and street) (City or town) (State)
3. Location, if different from mail address

Injured or ill employee
4. Name ----------
(First) (Middle) (Last)
Social Security No. ----------
5. Home address ----------
(No. and street) (City or town) (State)
6. Age ----- 7. Sex: Male ----- Female -----
(Check one)
8. Occupation ----------
(Enter regular job title, *not* the specific activity he was performing at time of injury.)
9. Department ----------
(Enter name of department or division in which the injured person is regularly employed, even though he may have been temporarily working in another department at the time of injury.)

The accident or exposure to occupational illness
10. Place of accident or exposure ----------
(No., Street) (City or town) (State)

If accident or exposure occurred on employer's premises, give address of plant or establishment in which it occurred. Do not indicate department or division within the plant or establishment. If accident occurred outside employer's premises at an identifiable address, give that address. If it occurred on a public highway or at any other place which cannot be identified by number and street, please provide place references locating the place of injury as accurately as possible.

11. Was place of accident or exposure on employer's premises? ---------- (Yes or No)
12. What was the employee doing when injured? ----------

(Be specific. If he was using tools or equipment or handling material, name them and tell what he was doing with them.)

13. How did the accident occur? ----------

(Describe fully the events which resulted in the injury or occupational illness. Tell what happened and how it happened. Name any objects or substances involved and tell how they were involved. Give full details on all factors which led or contributed to the accident. Use separate sheet for additional space.)

Occupational injury or occupational illness
14. Describe the injury or illness in detail and indicate the part of body affected ----------

(e.g.: amputation of right index finger at second joint; fracture of ribs; lead poisoning; dermatitis of left hand, etc.)

15. Name the object or substance which directly injured the employee.

(For example, the machine or thing he struck against or which struck him; the vapor poison he inhaled or swallowed; the chemical or radiation which irritated his skin; or in cases of strains, hernias, etc., the thing he was lifting, pulling, etc.)

16. Date of injury or initial diagnosis: ---- (Date)
17. Did employee die? ------ (Yes or No)
Other
16. Name and address of physician ----------
19. If hospitalized, name and address of hospital ----------
Date of report ---------- Prepared by
Official position ----------
12–4720 B. 1469

SUPPLEMENTARY RECORD OF OCCUPATIONAL INJURIES AND ILLNESSES

To supplement the Log of Occupational Injuries and Illnesses (OSHA No. 100), each establishment must maintain a record of each recordable occupational injury or illness. Workmen's compensation, insurance, or other reports are acceptable as records if they contain all facts listed below or are supplemented to do so. If no suitable report is made for other purposes, this form (OSHA No. 101) may be used or the necessary facts can be listed on a separate plain sheet of paper. These records must also be available in the establishment without delay and at reasonable times for examination by representatives of the Department of Labor and the Department of Health, Education, and Welfare, and States accorded jurisdiction under the Act. The records must be maintained for a period of not less than 5 years following the end of the calendar year to which they relate.

Such records must contain at least the following facts:

(1) *About the employer*—name, mail address, and location if different from mail address.

(2) *About the injured or ill employee*—name, social security number, home address, age, sex, occupation, and department.

(3) *About the accident or exposure to occupational illness*—place of accident or ex-

posure, whether it was on employer's premises, what the employee was doing when injured, and how the accident occurred.

(4) *About the occupational injury or illness*—description of the injury or illness, including part of body affected; name of the object or substance which directly injured the employee; and date of injury or diagnosis of illness.

(5) *Other*—name and address of physician; if hospitalized, name and address of hospital; date of report; and name and position of person preparing the report.

SEE DEFINITIONS ON THE BACK OF OSHA FORM No. 100

(Note the definitions on the back of OSHA Form No. 100 are those published in 1904.12 of Title 29, Code of Federal Regulations.)

The summary from the log is made as follows (for occupational injuries, code 10—follow the same procedure for each of the illness categories):

Fatalities. For cases with code 10 in column 7, count the number of entries (date of death) in column 8. *Lost workday cases, number of cases*. For cases with code 10 in column 7, count the number of entries in column 9.

Number of cases involving transfer or termination. For cases with code 10 in column 7, count the number of check marks in column 10. *Number of lost workdays*. For cases with code 10 in column 7, add the entries (lost workdays) in column 9.

Nonfatal cases without lost workdays, number of cases. For cases with code 10 in column 7, count the checks in column 11.

Number of cases involving transfer or termination. For cases with code 10 in column 7, count the checks in column 12.

Total each column for occupational illnesses and then, on the last line, for occupational injuries and illnesses combined.

Compare the sum of entries in the total line for columns 3, 4, and 7 with the total number of cases on the log. If the summary has been made correctly, they will match.

[FR Doc.71-9260 Filed 7-1-71;8:45 am]

OSHA No. 102

SUMMARY

OCCUPATIONAL INJURIES AND ILLNESSES

Establishment name and address:

Injury and illness category		Lost workday cases			Nonfatal cases without lost workdays[1]		
Code	Category	Fatalities	Number of cases	Number of cases involving permanent transfer to another job or termination of employment	Number of lost workdays	Number of cases	Number of cases involving transfer to another job or termination of employment
1	2	3	4	5	6	7	8
10	Occupational injuries						
	Occupational illnesses						
21	Occupational skin diseases or disorders.						
22	Dust diseases of the lungs (pneumoconioses).						
23	Respiratory conditions due to toxic agents.						
24	Poisoning (systemic effects of toxic materials).						
25	Disorders due to physical agents (other than toxic materials).						
26	Disorders due to repeated trauma.						
29	All other occupational illnesses.						
	Total-occupational illnesses (21-29).						
	Total-occupational injuries and illnesses.						

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[1] Nonfatal cases without lost workdays-cases resulting in: Medical treatment beyond first aid, diagnosis of occupational illness, loss of consciousness, restriction of work or motion, or transfer to another job (without lost workdays).

SUMMARY

OCCUPATIONAL INJUAIES AND ILLNESSES

Every employer is required to prepare a summary of the occupational injury and illness experience of the employees in each of his establishments at the end of each year within one month following the end of that year. The summary must be posted in a place accessible to the employees. The form on the reverse of this sheet is to be used.

Before preparing the summary, review the log to be sure that entries are correct and each case is included in only one of the classes identified by columns 8, 9, and 11. If an employee's loss of workdays is continuing at the time the summary is being made, estimate the number of future workdays he will lose and add that estimate to the workdays he has already lost and include this total in the summary. No further entries need be made with respect to such cases in the next summary.

Occupational injuries and the seven categories of occupational illness are to be summarized separately. Identify each case by the code in column 7 of the log of occupational injuries and illnesses.

PART X - PROPOSED ENABLING LEGISLATION

10.0 (See Proposed MOSHA - Attachment I)

10.1 Timetable:

A. Introduction to 43rd Legislative Assembly	January 1, 1973
B. Expected passage by Legislative Assembly	March 1, 1973
C. Effective date (if passed)	August 1, 1973

PART XI - BUDGET

11.0 The Workmen's Compensation Division will provide its share of the 1972-1973 budget as indicated in § 11.3

11.1 Personal Services - Fiscal Year 1972-1973:

POSITION TITLE	Percentage of time	State Share	Federal Share	Total
Commissioner of Labor and Industry	10%	$ 1,050	$ 1,050	$ 2,100
Administrator of W.C.D.	25%	2,599	2,599	5,198
Ass't. Administrator of W.C.D.	10%	797	797	1,594
Chief Accountant	10%	698	698	1,396
Information & Education	40%	2,330	2,330	4,660
Chief, Bureau of Safety and Health	100%	7,278	7,728	14,556
Ass't. Chief, Safety	100%	5,142	5.142	10,284
Ass't. Chief, Health	100%	6,804	6,804	13,608
Compliance Supervisor	100%	4,752	4,752	9,504
Standards Supervisor	100%	4,530	4,530	9,060
Training Supervisor	100%	4,530	4,530	9,060
Ass't. Compliance Supervisor (2)	100%	6,300	6,300	12,600
Health Compliance Officer	100%	4,218	4,218	8,436
Safety & Health Compliance Officer (15)	100%	49,509	49,509	99,018

POSITION TITLE	Percentage of time	State Share	Federal Share	Total
Standards Officer	100%	$ 3,462	$ 3,462	$ 6,924
Training Officer	100%	3,636	3,636	7,272
Accountant	100%	4,500	4,500	9,000
Coding Clerk	100%	3,900	3,900	7,800
Secretary (2)	100%	6,126	6,126	12,252
Clerk-Typist (4)	100%	7,629	7,629	15,258
Sub-Total		$129,790	$129,790	$259,580
Employer's Share Employee Benefits	12%	$ 15,575	$ 15,575	$ 31,150
TOTAL		$145,365	$145,365	$290,729

11.2 Other Budget Items:

	State	Federal	Total
Contracted Services	$25,076	$ 25,076	$ 50,152
Supplies	7,752	7,752	15,504
Communications	9,293	9,293	18,586
Travel	73,474	73,474	146,948
Rent	6,225	6,225	12,450
Utilities	1,215	1,215	2,430
Capital Equipment (new)	8,653	8,653	17,306
(11.0 Personal Services)	145,365	145,365	290,730

11.3 GRAND TOTAL BUDGET $277,053 $277,053 $554,106

11.4 Projected Budgets. Projected future grand total budgets will be in the proximity of $688,878 for Fiscal 1973-1974 and $861,092 for Fiscal 1974-1975.

PART XII - PROPOSED RULES AND REGULATIONS FOR INSPECTIONS, CITATIONS, ASSESSMENT OF PENALTIES, AND PROCEDURES FOR VARIATIONS FROM SAFETY AND HEALTH REGULATIONS.

12.0 Intent. It is the intent of the Workmen's Compensation to adopt the following:

A. 29 CFR, Part 1903

B. 29 CFR, Part 1905

These rules and regulations will be adopted in their entirety, including changes by November, 1974.

12,1 Administration and Operational Procedures. From the date of the initial agreement between the Secretary of Labor and the Governor of Montana, (April 1, 1971) the Workmen's Compensation Division has been revising administrative and operational procedures, including reports and forms. The purpose of these changes is to be compatible with the Occupational Safety and Health Administration's rules and regulations.

12.2 The following appendices indicate some of the administrative changes that have been made to date:

Appendix XII	Inspection Form
Appendix XIII	Citation Form
Appendix XIV	Compliance Worksheet

12.3 29 CFR, Parts 1903 and 1905. At the time of formal adoption by the Workmen's Compensation Division, all applicable subsections and subsequent amendments, additions, or changes issued by the Assistant Secretary of Labor, will be considered for adoption. There will be several changes inserted so that responsibilities and functions will be assigned to the proper department, and/or organizations. Examples of some of the changes will be as follows:

A. Reference to Section numbers of the Act will change to appropriate section numbers of MOSHA.

B. Williams-Steiger Occupational Safety and Health Act will change to MOSHA.

C. U. S. Department of Labor will change to Department of Labor and Industry and/or Workmen's Compensation Division Office.

D. Department of Labor Office will change to Workmen's Compensation Division Office.

E. Secretary will change to Administrator, Workmen's Compensation Division.

F. Area Director will change to Administrator, Workmen's Compensation Division, and/or Bureau of Safety and Health.

G. Occupational Safety and Health Administration will change to Workmen's Compensation Division.

H. United States Code will change to Montana Code, MOSHA.

I. United States will change to Montana.

J. Regional Administrator will change to Commissioner of Labor and Industry, Administrator, Workmen's Compensation, and/or Bureau of Safety and Health.

K. Regional Solicitor will change to Workmen's Compensation Division Solicitor.

13.4 Prior to adoption of rules and regulations, etc., additional study will be required to further determine and define administrative responsibilities and functions.

federal register

SATURDAY, SEPTEMBER 4, 1971

WASHINGTON, D. C.

Volume 36 · Number 173

Title 29—LABOR

Chapter XVII—Occupational Safety and Health Administration, Department of Labor

PART 1903—INSPECTIONS, CITATIONS AND PROPOSED PENALTIES

On May 5, 1971, notice of proposed rule making was published in the FEDERAL REGISTER (36 F.R. 8376) concerning proposed rules and general policies for enforcement of the inspection, citation and penalty provisions of the Williams-Steiger Occupational Safety and Health Act of 1970. After consideration of the relevant material which has been submitted by interested persons, the proposal is hereby adopted with some changes as a new Part 1903 to Title 29 in the Code of Federal Regulations.

The new Part 1903 shall be effective upon publication in the FEDERAL REGISTER (9-4-71), except § 1903.2, which shall be effective 30 days after publication in the FEDERAL REGISTER.

The new Part 1903 reads as follows:

Sec.
1903.1 Purpose and scope.
1903.2 Posting of notice; availability of the Act, regulations and applicable standards.
1903.3 Authority for inspection.
1903.4 Objection to inspection.
1903.5 Entry not a waiver.
1903.6 Advance notice of inspections.
1903.7 Conduct of inspections.
1903.8 Representatives of employers and employees.
1903.9 Trade secrets.
1903.10 Consultation with employees.
1903.11 Complaints by employees.
1903.12 Inspection not warranted; informal review.
1903.13 Imminent danger.
1903.14 Citations; notices of de minimis violations.
1903.15 Proposed penalties.
1903.16 Posting of citations.
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AUTHORITY: The provisions of this Part 1903 issued under secs. 8(c)(1), 8(e), 8(f)(2), 8(g)(2), 9 (a) and (b), 84 Stat. 1599, 1600, 1601; 29 U.S.C. 657, 658.

§ 1903.1 Purpose and scope.

The Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1590 et seq., 29 U.S.C. 651 et seq.) requires, in part, that every employer covered under the Act furnish to his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees. The Act also requires that employers comply with occupational safety and health standards promulgated under the Act, and that employees comply with standards, rules, regulations and orders issued under the Act which are applicable to their own actions and conduct. The Act authorizes the Department of Labor to conduct inspections, and to issue citations and proposed penalties for alleged violations. The Act, under section 20(b), also authorizes the Secretary of Health, Education, and Welfare to conduct inspections and to question employers and employees in connection with research and other related activities. The Act contains provisions for adjudication of violations, periods prescribed for the abatement of violations, and proposed penalties by the Occupational Safety and Health Review Commission, if contested by an employer or by an employee or authorized representative of employees, and for judicial review. The purpose of this Part 1903 is to prescribe rules and to set forth general policies for enforcement of the inspection, citation, and proposed penalty provisions of the Act. In situations where this Part 1903 sets forth general enforcement policies rather than substantive or procedural rules, such policies may be modified in specific circumstances where the Secretary or his designee determines that an alternative course of action would better serve the objectives of the Act.

§ 1903.2 Posting of notice; availability of Act, regulations and applicable standards.

(a) Each employer shall post and keep posted a notice or notices, to be furnished by the Occupational Safety and Health Administration, U.S. Department of Labor, informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact the employer or the nearest office of the Department of Labor. Such notice or notices shall be posted by the employer in each establishment in a conspicuous place or places where notices to employees are customarily posted. Each employer shall take steps to insure that such notices are not altered, defaced, or covered by other material.

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(b) "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. (For example: A factory, mill, store, hotel, restaurant, movie theatre, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and a separate notice or notices shall be posted in each such establishment, to the extent that such notices have been furnished by the Occupational Safety and Health Administration, U.S. Department of Labor. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation, communications, and electric, gas and sanitary services, the notice or notices required by this section shall be posted at the location to which employees report each day. Where employees do not usually work at, or report to, a single establishment, such as longshoremen, traveling salesmen, technicians, engineers, etc., such notice or notices shall be posted at the location from which the employees operate to carry out their activities. In all cases, such notice or notices shall be posted in accordance with the requirements of paragraph (a) of this section.

(c) Copies of the Act, all regulations published in this chapter and all applicable standards will be available at all Area Offices of the Occupational Safety and Health Administration, U.S. Department of Labor. If an employer has obtained copies of these materials, he shall make them available upon request to any employee or his authorized representative for review in the establishment where the employee is employed on the same day the request is made or at the earliest time mutually convenient to the employee or his authorized representative and the employer.

(d) Any employer failing to comply with the provisions of this section shall be subject to citation and penalty in accordance with the provisions of section 17 of the Act.

§ 1903.3 Authority for inspection.

(a) Compliance Safety and Health Officers of the Department of Labor are authorized to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent or employee; and to review records required by the Act and regulations published in this chapter, and other records which are directly related to the purpose of the inspection. Representatives of the Secretary of Health, Education, and Welfare are authorized to make inspections and to question employers and employees in order to carry out the functions of the Secretary of Health, Education, and Welfare under the Act. Inspections conducted by Department of Labor Compliance Safety and Health Officers and representatives of the Secretary of Health, Education, and Welfare under section 8 of the Act and pursuant to this Part 1903 shall not affect the authority of any State to conduct inspections in accordance with agreements and plans under section 18 of the Act.

(b) Prior to inspecting areas containing information which is classified by an agency of the United States Government in the interest of national security, Compliance Safety and Health Officers shall have obtained the appropriate security clearance.

§ 1903.4 Objection to inspection.

Upon a refusal to permit a Compliance Safety and Health Officer, in the exercise of his official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to question any employer, owner, operator, agent, or employee, in accordance with § 1903.3, or to permit a representative of employees to accompany the Compliance Safety and Health Officer during the physical inspection of any workplace in accordance with § 1903.8, the Compliance Safety and Health Officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records, or interviews concerning which no objection is raised. The Compliance Safety and Health Officer shall endeavor to ascertain the reason for such refusal, and he shall immediately report the refusal and the reason therefor to the Area Director. The Area Director shall immediately consult with the Regional Administrator and the Regional Solicitor, who shall promptly take appropriate action, including compulsory process, if necessary.

§ 1903.5 Entry not a waiver.

Any permission to enter, inspect, review records, or question any person, shall not imply or be conditioned upon a waiver of any cause of action, citation, or penalty under the Act. Compliance Safety and Health Officers are not authorized to grant any such waiver.

§ 1903.6 Advance notice of inspections.

(a) Advance notice of inspections may not be given, except in the following situations: (1) In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible; (2) in circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection; (3) where necessary to assure the presence of representatives of the employer and employees or the appropriate personnel needed to aid in the inspection; and (4) in other circumstances where the Area Director determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

(b) In the situations described in paragraph (a) of this section, advance notice of inspections may be given only if authorized by the Area Director, except that in cases of apparent imminent danger, advance notice may be given by the Compliance Safety and Health Officer without such authorization if the Area Director is not immediately available. When advance notice is given, it shall be the employer's responsibility promptly to notify the authorized representative of employees of the inspection, if the identity of such representative is known to the employer. (See § 1903.8(b) as to situations where there is no authorized representative of employees.) Upon the request of the employer, the Compliance Safety and Health Officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the Compliance Safety and Health Officer with the identity of such representative and with such other information as is necessary to enable him promptly to inform such representative of the inspection. An employer who fails to comply with his obligation under this paragraph promptly to inform the authorized representative of employees of the inspection or to furnish such information as is necessary to enable the Compliance Safety and Health Officer promptly to inform such representative of the inspection, may be subject to citation and penalty under section 17(c) the Act. Advance notice in any of situations described in paragraph (a) of this section shall not be given more than 24 hours before the inspection is scheduled to be conducted, except in apparent imminent danger situations and in other unusual circumstances.

(c) The Act provides in section 17(f) that any person who gives advance notice of any inspection to be conducted under the Act, without authority from the Secretary or his designees, shall, upon conviction, be punished by fine of not more than $1,000 or by imprisonment for not more than 6 months, or by both.

§ 1903.7 Conduct of inspections.

(a) Subject to the provisions of § 1903.3, inspections shall take place at such times and in such places of employment as the Area Director or the Compliance Safety and Health Officer may direct. At the beginning of an inspection, Compliance Safety and Health Officers shall present their credentials to the owner, operator, or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified in § 1903.3 which they wish to review. However, such designation of records shall not preclude access to additional records specified in § 1903.3.

(b) Compliance Safety and Health Officers shall have authority to take environmental samples and to take obtain photographs related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment. (See § 1903.9 on trade secrets.)

(c) In taking photographs and samples, Compliance Safety and Health Officers shall take reasonable precautions to insure that such actions with flash, spark-producing, or other equipment would not be hazardous. Compliance Safety and Health Officers shall comply with all employer safety and health rules and practices at the establishment being inspected, and they shall wear and use appropriate protective clothing and equipment.

(d) The conduct of inspections shall be such as to preclude unreasonable disruption of the operations of the employer's establishment.

(e) At the conclusion of an inspection, the Compliance Safety and Health Officer shall confer with the employer or his representative and informally advise him of any apparent safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the Compliance Safety and Health Officer any pertinent information regarding conditions in the workplace.

(f) Inspections shall be conducted in accordance with the requirements of this part.

§ 1903.8 Representatives of employers and employees.

(a) Compliance Safety and Health Officers shall be in charge of inspections and questioning of persons. A representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Compliance Safety and Health Officer during the physical inspection of any workplace for the purpose of aiding such inspection. A Compliance Safety and Health Officer may permit additional employer representatives and additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the inspection. A different employer and employee representative may accompany the Compliance Safety and Health Officer during each different phase of an inspection if this will not interfere with the conduct of the inspection.

(b) Compliance Safety and Health Officers shall have authority to resolve all disputes as to who is the representative authorized by the employer and employees for the purpose of this section. If there is no authorized representative of employees, or if the Compliance Safety and Health Officer is unable to determine with reasonable certainty who is such representative, he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

(c) The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the Compliance Safety and Health Officer, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or a safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the Compliance Safety and Health Officer during the inspection.

(d) Compliance Safety and Health Officers are authorized to deny the right of accompaniment under this section to any person whose conduct interferes with a fair and orderly inspection. The right of accompaniment in areas containing trade secrets shall be subject to the provisions of § 1903.9(d). With regard to information classified by an agency of the U.S. Government in the interest of national security, only persons authorized to have access to such information may accompany a Compliance Safety and Health Officer in areas containing such information.

§ 1903.9 Trade secrets.

(a) Section 15 of the Act provides: "All information reported to or otherwise obtained by the Secretary or his representative in connection with any inspection or proceeding under this Act which contains or which might reveal a trade secret referred to in section 1905 of title 18 of the United States Code shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this Act or when relevant in any proceeding under this Act. In any such proceeding the Secretary, the Commission, or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets." Section 15 of the Act is considered a statute within the meaning of section 552(b)(3) of title 5 of the United States Code, which exempts from the disclosure requirements matters that are "specifically exempted from disclosure by statute."

(b) Section 1905 of title 18 of the United States Code provides: "Whoever, being an officer or employee of the United States or of any department or agency thereof, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined not more than $1,000, or imprisoned not more than 1 year, or both; and shall be removed from office or employment."

(c) At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the Compliance Safety and Health Officer has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs, and environmental samples, shall be labeled "confidential—trade secret" and shall not be disclosed except in accordance with the provisions of section 15 of the Act.

(d) Upon the request of an employer, any authorized representative of employees under § 1903.8 in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is no such representative or employee, the Compliance Safety and Health Officer shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

§ 1903.10 Consultation with employees.

Compliance Safety and Health Officers may consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Act which he has reason to believe exists in the workplace to the attention of the Compliance Safety and Health Officer.

§ 1903.11 Complaints by employees.

(a) Any employee or representative of employees who believe that a violation of the Act exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the Area Director or to a Compliance Safety and Health Officer. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy shall be provided the employer or his agent by the Area Director or Compliance Safety and Health Officer no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the Department of Labor.

(b) If upon receipt of such notification the Area Director determines that the complaint meets the requirements set forth in paragraph (a) of this section, and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable, to determine if such alleged violation exists. Inspections under this section shall not be limited to matters referred to in the complaint.

(c) Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the Compliance Safety and Health Officer, in writing, of any violation of the Act which they have reason to believe exists in such workplace. Any such notice shall comply with the requirements of paragraph (a) of this section.

(d) Section 11(c)(1) of the Act provides: "No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act."

§ 1903.12 Inspection not warranted; informal review.

(a) If the Area Director determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint under § 1903.11, he shall notify the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the Regional Administrator and, at the same time, providing the employer with a copy of such statement by certified mail. The employer may submit an opposing written statement of position with the Regional Administrator and, at the same time, provide the complaining party with a copy of such statement by certified mail. Upon the request of the complaining party or the employer, the Regional Administrator, at his discretion, may hold an informal conference in which the complaining party and the employer may orally present their views. After considering all written and oral views presented, the Regional Administrator shall affirm, modify, or reverse the determination of the Area Director and furnish the complaining party and the employer and written notification of his decision and the reasons therefor. The decision of the Regional Administrator shall be final and not subject to further review.

(b) If the Area Director determines that an inspection is not warranted because the requirements of § 1903.11(a) have not been met, he shall notify the complaining party in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of § 1903.11(a).

§ 1903.13 Imminent danger.

Whenever and as soon as a Compliance Safety and Health Officer concludes on the basis of an inspection that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by the Act, he shall inform the affected employees and employers of the danger and that he is recommending a civil action to restrain such conditions or practices and for other appropriate relief in accordance with the provisions of section 13(a) of the Act. Appropriate citations and notices of proposed penalties may be issued with respect to an imminent danger even though, after being informed of such danger by the Compliance Safety and Health Officer, the employer immediately eliminates the imminence of the danger and initiates steps to abate such danger.

§ 1903.14 Citations; notices of de minimis violations.

(a) The Area Director shall review the inspection report of the Compliance Safety and Health Officer. If, on the basis of the report the Area Director believes that the employer has violated a requirement of section 5 of the Act, of any standard, rule or order promulgated pursuant to section 6 of the Act, or of any substantive rule published in this chapter, he shall, if appropriate, consult with the Regional Solicitor, and he shall issue to the employer either a citation or a notice of de minimis violations which have no direct or immediate relationship to safety or health. An appropriate citation or notice of de minimis violations shall be issued even though after being informed of an alleged violation by the Compliance Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Any citation or notice of de minimis violations shall be issued with reasonable promptness after termination of the inspection. No citation may be issued under this section after the expiration of 6 months following the occurrence of any alleged violation.

(b) Any citation shall describe with particularity the nature of the alleged violation, including a reference to the provision(s) of the Act, standard, rule, regulation, or order alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violation.

(c) If a citation or notice of de minimis violations is issued for a violation alleged in a request for inspection under § 1903.11 (a) or a notification of violation under § 1903.11(c), a copy of the citation or notice of de minimis violations shall also be sent to the employee or representative of employees who made such request or notification.

(d) After an inspection, if the Area Director determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under § 1903.11(a) or a notification of violation under § 1903.11(c), the informal review procedures prescribed in § 1903.12(a) shall be applicable. After considering all views presented, the Regional Administrator shall affirm the determination of the Area Director, order a reinspection, or issue a citation if he believes that the inspection disclosed a violation. The Regional Administrator shall furnish the complaining party and the employer with written notification of his determination and the reasons therefor. The determination of the Regional Administrator shall be final and not subject to review.

(e) Every citation shall state that the issuance of a citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless the citation is affirmed by the Review Commission.

§ 1903.15 Proposed penalties.

(a) After, or concurrent with, the issuance of a citation, and within a reasonable time after the termination of the inspection, the Area Director shall notify the employer by certified mail or by personal service by the Compliance Safety and Health Officer of the proposed penalty under section 17 of the Act, or that no penalty is being proposed. Any notice of proposed penalty shall state that the proposed penalty shall be deemed to the final order of the Review Commission and not subject to review by any court or agency unless, within 15 working days from the date of receipt of such notice, the employer notifies the Area Director in writing that he intends to contest the citation or the notification of proposed penalty before the Review Commission.

(b) The Area Director shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations, in accordance with the provisions of section 17 of the Act.

(c) Appropriate penalties may be proposed with respect to an alleged violation even though after being informed of such alleged violation by the Compliance Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Penalties shall not be proposed for de minimis violations which have no direct or immediate relationship to safety or health.

§ 1903.16 Posting of citations.

(a) Upon receipt of any citation under the Act, the employer shall immediately post such citation, or a copy thereof, unedited, at or near each place an alleged violation referred to in the citation occurred, except as provided below. Whe because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of alleged violation, such citation shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employers are engaged in activities which are physically dispersed (see § 1903.2 (b)), the citation may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location (see § 1903.2(b)), the citation may be posted at the location from which the employees operate to carry out their activities. The employer shall take steps to ensure that the citation is not altered, defaced, or covered by other material. Notices of de minimis violations need not be posted.

(b) Each citation, or a copy thereof, shall remain posted until the violation has been abated, or for 3 working days, whichever is later. The filing by the employer of a notice of intention to contest under § 1903.17 shall not affect his posting responsibility under this section unless and until the Review Commission issues a final order vacating the citation.

(c) An employer to whom a citation has been issued may post a notice in the same location where such citation is posted indicating that the citation is being contested before the Review Commission, and such notice may explain the reasons for such contest. The employer may also indicate that specified steps have been taken to abate the violation.

(d) Any employer failing to comply with the provisions of paragraphs (a) and (b) of this section shall be subject to citation and penalty in accordance with the provisions of section 17 of the Act.

1903.17 Employer and employee contests before the Review Commission.

(a) Any employer to whom a citation or notice of proposed penalty has been issued may, under section 10(a) of the Act, notify the Area Director in writing that he intends to contest such citation or proposed penalty before the Review Commission. Such notice of intention to contest shall be postmarked within 15 working days of the receipt by the employer of the notice of proposed penalty. Every notice of intention to contest shall specify whether it is directed to the citation or to the proposed penalty, or both. The Area Director shall immediately transmit such notice to the Review Commission in accordance with the rules of procedure prescribed by the Commission.

(b) Any employee or representative of employees of an employer to whom a citation has been issued may, under section 10(c) of the Act, file a written notice with the Area Director alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable. Such notice shall be postmarked within 15 working days of the receipt by the employer of the notice of proposed penalty or notice that no penalty is being proposed. The Area Director shall immediately transmit such notice to the Review Commission in accordance with the rules of procedure prescribed by the Commission.

§ 1903.18 Failure to correct a violation for which a citation has been issued.

(a) If an inspection discloses that an employer has failed to correct an alleged violation for which a citation has been issued within the period permitted for its correction, the Area Director shall, if appropriate, consult with the Regional Solicitor, and he shall notify the employer by certified mail or by personal service by the Compliance Safety and Health Officer of such failure and of the additional penalty proposed under section 17(d) of the Act by reason of such failure. The period for the correction of a violation for which a citation has been issued shall not begin to run until the entry of a final order of the Review Commission in the case of any review proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties.

(b) Any employer receiving a notification of failure to correct a violation and of proposed additional penalty may, under section 10(b) of the Act, notify the Area Director in writing that he intends to contest such notification or proposed additional penalty before the Review Commission. Such notice of intention to contest shall be postmarked within 15 working days of the receipt by the employer of the notification of failure to correct a violation and of proposed additional penalty. The Area Director shall immediately transmit such notice to the Review Commission in accordance with the rules of procedure prescribed by the Commission.

(c) Each notification of failure to correct a violation and of proposed additional penalty shall state that it shall be deemed to be the final order of the Review Commission and not subject to review by any court or agency unless, within 15 working days from the date of receipt of such notification, the employer notifies the Area Director in writing that he intends to contest the notification or the proposed additional penalty before the Review Commission.

§ 1903.19 Informal conferences.

At the request of an affected employer, employee, or representative of employees, the Regional Administrator may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. The settlement of any issue at such conference shall be subject to the rules of procedure prescribed by the Review Commission. If the conference is requested by the employer, an affected employee or his representative shall be afforded an opportunity to participate, at the discretion of the Regional Administrator. If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the Regional Administrator. Any party may be represented by counsel at such conference. No such conference or request for such conference shall operate as a stay of any 15-working-day period for filing a notice of intention to contest as prescribed in § 1903.17.

§ 1903.20 State administration.

Nothing in this Part 1903 shall preempt the authority of any State to conduct inspections, to initiate enforcement proceedings or otherwise to implement the applicable provisions of State law with respect to State occupational safety and health standards in accordance with agreements and plans under section 18 of the Act and Parts 1901 and 1902 of this chapter.

§ 1903.21 Definitions.

(a) "Act" means the Williams-Steiger Occupational Safety and Health Act of 1970. (84 Stat. 1590 et seq., 29 U.S.C. 651 et seq.)

(b) The definitions and interpretations contained in section 3 of the Act shall be applicable to such terms when used in this Part 1903.

(c) "Working days" means Mondays through Fridays but shall not include Saturdays, Sundays, or Federal holidays. In computing 15 working days, the day of receipt of any notice shall not be included, and the last day of the 15 working days shall be included.

(d) "Compliance Safety and Health Officer" means a person authorized by the Occupational Safety and Health Administration, U.S. Department of Labor, to conduct inspections.

(e) "Area Director" means the employee or officer in charge of an Area Office of the Occupational Safety and Health Administration, U.S. Department of Labor.

(f) "Regional Administrator" means the employee or officer in charge of a Region of the Occupational Safety and Health Administration, U.S. Department of Labor.

(g) "Inspection" means any inspection of an employer's factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer, and includes any inspection conducted pursuant to a complaint filed under § 1903.11 (a) and (c), any reinspection, followup inspection, accident investigation or other inspection conducted under section 8(a) of the Act.

Signed at Washington, D.C., this 1st day of September 1971.

G. C. GUENTHER,
Assistant Secretary of Labor.

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Chapter XVII—Occupational Safety and Health Administration, Department of Labor

PART 1905—RULES OF PRACTICE FOR VARIANCES, LIMITATIONS, VARIATIONS, TOLERANCES, AND EXEMPTIONS UNDER THE WILLIAMS-STEIGER OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

Implementation of Williams-Steiger Occupational Safety and Health Act of 1970

Pursuant to sections 6, 8, and 16 of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1598, and 1606; 29 U.S.C. 655, 657, 665), Chapter XVII of Title 29, Code of Federal Regulations, is hereby amended by adding thereto a new part designated Part 1905. The new Part 1905 contains the rules of practice for administrative proceedings for granting variances from occupational safety and health standards under certain provisions of section 6 of the Act, and rules of practice for providing limitations, variations, tolerances, and exemptions under section 16 of the Act.

The rules of practice shall be effective upon publication in the FEDERAL REGISTER (6-30-71). However, interested persons are encouraged to petition for any amendments to the rules which they may consider appropriate.

The new Part 1905 reads as follows:

Subpart A—General

Sec.
1905.1 Purpose and scope.
1905.2 Definitions.
1905.3 Petitions for amendments to this part.
1905.4 Amendments to this part.
1905.5 Effect of variances.
1905.6 Public notice of a granted variance, limitation, variation, tolerance, or exemption.
1905.7 Form of documents; subscription; copies.

Subpart B—Applications for Variances, Limitations, Variations, Tolerances, Exemptions and Other Relief

1905.10 Variances and other relief under section 6(b)(6)(A).
1905.11 Variances and other relief under section 6(d).
1905.12 Limitations, variations, tolerances, or exemptions under section 16.
1905.13 Modification, revocation, and renewal of rules or orders.
1905.14 Action on applications.
1905.15 Requests for hearings on applications.
1905.16 Consolidation of proceedings.

Subpart C—Hearings

1905.20 Notice of hearing.
1905.21 Manner of service.
1905.22 Hearing examiners; powers and duties.
1905.23 Prehearing conferences.
1905.24 Consent findings and rules or orders.
1905.25 Discovery.
1905.26 Hearings.
1905.27 Decisions of hearing examiners.
1905.28 Exceptions.
1905.29 Transmission of record.
1905.30 Decisions of the Assistant Secretary.

Subpart D—Summary Decisions

1905.40 Motion for summary decision.
1905.41 Summary decision.

Subpart E—Effect of Initial Decisions

1905.50 Effect of appeal of a hearing examiner's decision.
1905.51 Finality for purposes of judicial review.

AUTHORITY: The provisions of this Part 1905 issued under secs. 6, 8, 16, 84 Stat. 1593, 1598, 1606; 29 U.S.C. 655, 657, 665.

Subpart A—General

§ 1905.1 Purpose and scope.

(a) This part contains rules of practice for administrative proceedings (1) to grant variances and other relief under sections 6(b)(6)(A) and 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970, and (2) to provide limitations, variations, tolerances, and exemptions under section 16 of the Act.

(b) These rules shall be construed to secure a prompt and just conclusion of proceedings subject thereto.

(c) The rules of practice in this part do not apply to the granting of variances under section 6(b)(6)(C). Whenever appropriate, the procedure for granting such a variance shall be published in the FEDERAL REGISTER.

§ 1905.2 Definitions.

As used in this part, unless the context clearly requires otherwise—

(a) "Act" means the Williams-Steiger Occupational Safety and Health Act of 1970.

(b) "Secretary" means the Secretary of Labor.

(c) "Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health.

(d) "Person" means an individual, partnership, association, corporation, business trust, legal representative, an organized group of individuals, or an agency, authority, or instrumentality of the United States or of a State.

(e) "Party" means a person admitted to participate in a hearing conducted in accordance with Subpart C of this part. An applicant for relief and any affected employee shall be entitled to be named parties. The Department of Labor, represented by the Office of the Solicitor, shall be deemed to be a party without the necessity of being named.

(f) "Affected employee" means an employee who would be affected by the grant or denial of a variance, limitation, variation, tolerance, or exemption, or any one of his authorized representatives, such as his collective bargaining agent.

§ 1905.3 Petitions for amendments to this part.

Any person may at any time petition the Assistant Secretary in writing to revise, amend, or revoke any provisions of this part. The petition should set forth either the terms or the substance of the rule desired, with a concise statement of the reasons therefor and the effects thereof.

§ 1905.4 Amendments to this part.

The Assistant Secretary may at any time revise, amend, or revoke any provisions of this part, on his own motion or upon the written petition of any person.

§ 1905.5 Effect of variances.

All variances granted pursuant to this part shall have only future effect. In his discretion, the Assistant Secretary may decline to entertain an application for a variance on a subject or issue concerning which a citation has been issued to the employer involved and a proceeding on the citation or a related issue concerning a proposed penalty or period of abatement is pending before the Occupational Safety and Health Review Commission until the completion of such proceeding.

§ 1905.6 Public notice of a granted variance, limitation, variation, tolerance, or exemption.

Every final action granting a variance, limitation, variation, tolerance, or exemption under this part shall be published in the FEDERAL REGISTER. Every such final action shall specify the alternative to the standard involved which the particular variance permits.

§ 1905.7 Form of documents: subscription: copies.

(a) No particular form is prescribed for applications and other papers which may be filed in proceedings under this part. However, any applications and other papers shall be clearly legible. An original and six copies of any application or other papers shall be filed. The original shall be typewritten. Clear carbon copies, or printed or processed copies are acceptable copies.

(b) Each application or other paper which is filed in proceedings under this part shall be subscribed by the person filing the same or by his attorney or other authorized representative.

Subpart B—Applications for Variances, Limitations, Variations, Tolerances, Exemptions and Other Relief

§ 1905.10 Variances and other relief under section 6(b)(6)(A).

(a) *Application for variance.* Any employer, or class of employers, desiring a variance from a standard, or portion thereof, authorized by section 6(b)(6)(A) of the Act may file a written application containing the information specified in paragraph (b) of this section with the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, D.C. 20210.

(b) *Contents.* An application filed pursuant to paragraph (a) of this section shall include:

(1) The name and address of the applicant;

(2) The address of the place or places of employment involved;

(3) A specification of the standard or portion thereof from which the applicant seeks a variance;

(4) A representation by the applicant, supported by representations from qualified persons having first-hand knowledge of the facts represented, that he is unable to comply with the standard or portion thereof by its effective date and a detailed statement of the reasons therefor;

(5) A statement of the steps the applicant has taken and will take, with specific dates where appropriate, to protect employees against the hazard covered by the standard;

(6) A statement of when the applicant expects to be able to comply with the standard and of what steps he has taken and will take, with specific dates where appropriate, to come into compliance with the standard;

(7) A statement of the facts the applicant would show to establish that (i) the applicant is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date; (ii) he is taking all available steps to safeguard his employees against the hazards covered by the standard; and (iii) he has an effective program for coming into compliance with the standard as quickly as practicable;

(8) Any request for a hearing, as provided in this part;

(9) A statement that the applicant has informed his affected employees of the application by giving a copy thereof to their authorized representative, posting a statement, giving a summary of the application and specifying where a copy may be examined, at the place or places where notices to employees are normally posted, and by other appropriate means; and

(10) A description of how affected employees have been informed of the application and of their right to petition the Assistant Secretary for a hearing.

(c) *Interim order.*—(1) *Application.* An application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order may include statements of fact and arguments as to why the order should be granted. The Assistant Secretary may rule ex parte upon the application.

(2) *Notice of denial of application.* If an application filed pursuant to subparagraph (1) of this paragraph is denied, the applicant shall be given prompt notice of the denial, which shall include, or be accompanied by, a brief statement of the grounds therefor.

(3) *Notice of the grant of an interim order.* If an interim order is granted, a copy of the order shall be served upon the applicant for the order and other parties and the terms of the order shall be published in the FEDERAL REGISTER. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.

§ 1905.11 Variances and other relief under section 6(d).

(a) *Application for variance.* Any employer, or class of employers, desiring a variance authorized by section 6(d) of the Act may file a written application containing the information specified in paragraph (b) of this section, with the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, D.C. 20210.

(b) *Contents.* An application filed pursuant to paragraph (a) of this section shall include:

(1) The name and address of the applicant;

(2) The address of the place or places of employment involved;

(3) A description of the conditions, practices, means, methods, operations, or processes used or proposed to be used by the applicant;

(4) A statement showing how the conditions, practices, means, methods, operations, or processes used or proposed to be used would provide employment and places of employment to employees which are as safe and healthful as those required by the standard from which a variance is sought;

(5) A certification that the applicant has informed his employees of the application by (i) giving a copy thereof to their authorized representative; (ii) posting a statement giving a summary of the application and specifying where a copy may be examined, at the place or places where notices to employees are normally posted (or in lieu of such summary, the posting of the application itself); and (iii) by other appropriate means;

(6) Any request for a hearing, as provided in this part; and

(7) A description of how employees have been informed of the application and of their right to petition the Assistant Secretary for a hearing.

(c) *Interim order.*—(1) *Application.* An application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order may include statements of fact and arguments as to why the order should be granted. The Assistant Secretary may rule ex parte upon the application.

(2) *Notice of denial of application.* If an application filed pursuant to subparagraph (1) of this paragraph is denied, the applicant shall be given prompt notice of the denial, which shall include, or be accompanied by; a brief statement of the grounds therefor.

(3) *Notice of the grant of an interim order.* If an interim order is granted, a copy of the order shall be served upon the applicant for the order and other parties, and the terms of the order shall be published in the FEDERAL REGISTER. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.

§ 1905.12 Limitations, variations, tolerances, or exemptions.

(a) *Application.* Any person, or class of persons, desiring a limitation, variation, tolerance, or exemption authorized by section 16 of the Act may file an application containing the information specified in paragraph (b) of this section, with the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, D.C. 20210.

(b) *Contents.* An application filed pursuant to paragraph (a) of this section shall include:

(1) The name and address of the applicant;

(2) The address of the place or places of employment involved;

(3) A specification of the provision of the Act to or from which the applicant seeks a limitation, variation, tolerance, or exemption.

(4) A representation showing that the limitation, variation, tolerance, or exemption sought is necessary and proper to avoid serious impairment of the national defense;

(5) Any request for a hearing, as provided in this part; and

(6) A description of how employees have been informed of the application and of their right to petition the Assistant Secretary for a hearing.

(c) *Interim order*—(1) *Application.* An application may also be made for an interim order to be effective until a decision is rendered on the application for the limitation, variation, tolerance, or exemption filed previously or concurrently. An application for an interim order may include statements of fact and arguments as to why the order should be granted. The Assistant Secretary may rule ex parte upon the application.

(2) *Notice of denial of application.* If an application filed pursuant to subparagraph (1) of this paragraph is denied, the applicant shall be given prompt notice of the denial, which shall include, or be accompanied by, a brief statement of the grounds therefor.

(3) *Notice of the grant of an interim order.* If an interim order is granted, a copy of the order shall be served upon the applicant for the order and other parties, and the terms of the order shall be published in the FEDERAL REGISTER. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.

§ 1905.13 Modification, revocation, and renewal of rules or orders.

(a) *Modification or revocation.* (1) An affected employer or an affected employee may apply in writing to the Assistant Secretary of Labor for Occupational Safety and Health for a modification or revocation of a rule or order issued under section 6(b)(6)(A), 6(d), or 16 of the Act. The application shall contain:

(i) The name and address of the applicant;

(ii) A description of the relief which is sought;

(iii) A statement setting forth with particularity the grounds for relief;

(iv) If the applicant is an employer, a certification that the applicant has informed his affected employees of the application by:

(*a*) Giving a copy thereof to their authorized representative;

(*b*) Posting at the place or places where notices to employees are normally posted, a statement giving a summary of the application and specifying where a copy of the full application may be examined or, in lieu of the summary posting the application itself; and

(*c*) Other appropriate means.

(v) If the applicant is an affected employee, a certification that a copy of the application has been furnished to the employer; and

(vi) Any request for a hearing, as provided in this part.

(2) The Assistant Secretary may on his own motion proceed to modify or revoke a rule or order issued under section 6(b)(6)(A), 6(d), or 16 of the Act. In such event, the Assistant Secretary shall cause to be published in the FEDERAL REGISTER a notice of his intention affording interested persons an opportunity to submit written data, views, or arguments regarding the proposal and informing the affected employer and employees of their right to request a hearing, and shall take such other action as may be appropriate to give actual notice to affected employees. Any request for a hearing shall include a short and plain statement of:

(i) How the proposed modification or revocation would affect the requesting party; and

(ii) What the requesting party would seek to show on the subjects or issues involved.

(b) *Renewal.* Any final rule or order issued under section 6(b)(6)(A) or 16 of the Act may be renewed or extended as permitted by the applicable section and in the manner prescribed for its issuance.

§ 1905.14 Action on applications.

(a) *Defective applications.* (1) If an application filed pursuant to § 1905.10(a), § 1905.11(a), § 1905.12(a), or § 1905.13 does not conform to the applicable section, the Assistant Secretary may deny the application.

(2) Prompt notice of the denial of an application shall be given to the applicant.

(3) A notice of denial shall include, or be accompanied by, a brief statement of the grounds for the denial.

(4) A denial of an application pursuant to this paragraph shall be without prejudice to the filing of another application.

(b) *Adequate applications.* (1) If an application has not been denied pursuant to paragraph (a) of this section, the Assistant Secretary shall cause to be published in the FEDERAL REGISTER a notice of the filing of the application.

(2) A notice of the filing of an application shall include: (i) the terms, or an accurate summary, of the application; (ii) a reference to the section of the Act under which the application has been filed; (iii) an invitation to interested persons to submit within a stated period of time written data, views, or arguments regarding the application; and (iv) information to affected employers and employees of any right to request a hearing on the application.

§ 1905.15 Requests for hearings on applications.

(a) *Request for hearing.* Within the time allowed by a notice of the filing of an application, any affected employer or employee may file with the Assistant Secretary, in quadruplicate, a request for a hearing on the application.

(b) *Contents of a request for a hearing.* A request for a hearing filed pursuant to paragraph (a) of this section shall include:

(1) A concise statement of facts showing how the employer or employee would be affected by the relief applied for;

(2) A specification of any statement or representation in the application which is denied, and a concise summary of the evidence that would be adduced in support of each denial; and

(3) Any views or arguments on any issue of fact or law presented.

§ 1905.16 Consolidation of proceedings.

The Assistant Secretary on his own motion or that of any party may consolidate or contemporaneously consider two or more proceedings which involve the same or closely related issues.

Subpart C—Hearings

§ 1905.20 Notice of hearing.

(a) *Service.* Upon request for a hearing as provided in this part, or upon his own initiative, the Assistant Secretary shall serve, or cause to be served, a reasonable notice of hearing.

(b) *Contents.* A notice of hearing served under paragraph (a) of this section shall include:

(1) The time, place, and nature of the hearing;

(2) The legal authority under which the hearing is to be held;

(3) A specification of issues of fact and law; and

(4) A designation of a hearing examiner appointed under 5 U.S.C. 3105 to preside over the hearing.

(c) *Referral to hearing examiner.* A copy of a notice of hearing served pursuant to paragraph (a) of this section shall be referred to the hearing examiner designated therein, together with the original application and any written request for a hearing thereon filed pursuant to this part.

§ 1905.21 Manner of service.

Service of any document upon any party may be made by personal delivery of, or by mailing, a copy of the document to the last known address of the party. The person serving the document shall certify to the manner and the date of the service.

§ 1905.22 Hearing examiners; powers and duties.

(a) *Powers.* A hearing examiner designated to preside over a hearing shall have all powers necessary or appropriate to conduct a fair, full, and impartial hearing, including the following:

(1) To administer oaths and affirmations;

(2) To rule upon offers of proof and receive relevant evidence;

(3) To provide for discovery and to determine its scope;

(4) To regulate the course of the hearing and the conduct of the parties and their counsel therein;

(5) To consider and rule upon procedural requests;

(6) To hold conferences for the settlement or simplification of the issues by consent of the parties;

(7) To make, or to cause to be made, an inspection of the employment or place of employment involved.

(8) To make decisions in accordance with the Act, this part, and the Administrative Procedure Act (5 U.S.C. Ch. 5); and

(9) To take any other appropriate action authorized by the Act, this part, or the Administrative Procedure Act.

(b) *Private consultation.* Except to the extent required for the disposition of ex parte matters, a hearing examiner may not consult a person or a party on any fact at issue, unless upon notice and opportunity for all parties to participate.

(c) *Disqualification.* (1) When a hearing examiner deems himself disqualified to preside over a particular hearing, he shall withdraw therefrom by notice on the record directed to the Chief Hearing Examiner.

(2) Any party who deems a hearing examiner for any reason to be disqualified to preside, or to continue to preside, over a particular hearing, may file with the Chief Hearing Examiner of the Department of Labor a motion to disqualify and remove the hearing examiner, such motion to be supported by affidavits setting forth the alleged grounds for disqualification. The Chief Hearing Examiner shall rule upon the motion.

(d) *Contumacious conduct; failure or refusal to appear or obey the rulings of a presiding hearing examiner.* (1) Contumacious conduct at any hearing before the hearing examiner shall be ground for exclusion from the hearing.

(2) If a witness or a party refuses to answer a question after being directed to do so, or refuses to obey an order to provide or permit discovery, the hearing examiner may make such orders with regard to the refusal as are just and appropriate, including an order denying the application of an applicant or regulating the contents of the record of the hearing.

(e) *Referral to Federal Rules of Civil Procedure.* On any procedural question not regulated by this part, the Act, or the Administrative Procedure Act, a hearing examiner shall be guided to the extent practicable by any pertinent provisions of the Federal Rules of Civil Procedure.

§ 1905.23 Prehearing conferences.

(a) *Convening a conference.* Upon his own motion or the motion of a party, the hearing examiner may direct the parties or their counsel to meet with him for a conference to consider:

(1) Simplification of the issues;

(2) Necessity or desirability of amendments to documents for purposes of clarification, simplification, or limitation;

(3) Stipulations, admissions of fact, and of contents and authenticity of documents;

(4) Limitation of the number of parties and of expert witnesses; and

(5) Such other matters as may tend to expedite the disposition of the proceeding, and to assure a just conclusion thereof.

(b) *Record of conference.* The hearing examiner shall make an order which recites the action taken at the conference, the amendments allowed to any documents which have been filed, and the agreements made between the parties as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreements; and such order when entered controls the subsequent course of the hearing, unless modified at the hearing, to prevent manifest injustice.

§ 1905.24 Consent findings and rules or orders.

(a) *General.* At any time before the reception of evidence in any hearing, or during any hearing a reasonable opportunity may be afforded to permit negotiation by the parties of an agreement containing consent findings and a rule or order disposing of the whole or any part of the proceeding. The allowance of such opportunity and the duration thereof shall be in the discretion of the presiding hearing examiner, after consideration of the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement which will result in a just disposition of the issues involved.

(b) *Contents.* Any agreement containing consent findings and rule or order disposing of a proceeding shall also provide:

(1) That the rule or order shall have the same force and effect as if made after a full hearing;

(2) That the entire record on which any rule or order may be based shall consist solely of the application and the agreement;

(3) A waiver of any further procedural steps before the hearing examiner and the Assistant Secretary; and

(4) A waiver of any right to challenge or contest the validity of the findings and of the rule or order made in accordance with the agreement.

(c) *Submission.* On or before the expiration of the time granted for negotiations, the parties or their counsel may:

(1) Submit the proposed agreement to the presiding hearing examiner for his consideration; or

(2) Inform the presiding hearing examiner that agreement cannot be reached.

(d) *Disposition.* In the event an agreement containing consent findings and rule or order is submitted within the time allowed therefor, the presiding hearing examiner may accept such agreement by issuing his decision based upon the agreed findings.

§ 1905.25 Discovery.

(a) *Depositions.* (1) For reasons of unavailability or for other good cause shown, the testimony of any witness may be taken by deposition. Depositions may be taken orally or upon written interrogatories before any person designated by the presiding hearing examiner and having power to administer oaths.

(2) *Application.* Any party desiring to take the deposition of a witness may make application in writing to the presiding hearing examiner, setting forth: (i) the reasons why such deposition should be taken; (ii) the time when, the place where, and the name and post office address of the person before whom the deposition is to be taken; (iii) the name and address of each witness; and (iv) the subject matter concerning which each witness is expected to testify.

(3) *Notice.* Such notice as the presiding hearing examiner may order shall be given by the party taking the deposition to every other party.

(4) *Taking and receiving in evidence.* Each witness testifying upon deposition shall be sworn, and the parties not calling him shall have the right to cross-examine him. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing, read to the witness, subscribed by him, and certified by the officer before whom the deposition is taken. Thereafter, the officer shall seal the deposition, with two copies thereof, in an envelope and mail the same by registered mail to the presiding hearing examiner. Subject to such objections to the questions and answers as were noted at the time of taking the deposition and would be valid were the witness personally present and testifying, such deposition may be read and offered in evidence by the party taking it as against any party who was present, represented at the taking of the deposition, or who had due notice thereof. No part of a deposition shall be admitted in evidence unless there is a showing that the reasons for the taking of the deposition in the first instance exist at the time of hearing.

(b) *Other discovery.* Whenever appropriate to a just disposition of any issue in a hearing, the presiding hearing examiner may allow discovery by any other appropriate procedure, such as by written interrogatories upon a party, production of documents by a party, or by entry for inspection of the employment or place of employment involved.

§ 1905.26 Hearings.

(a) *Order of proceeding.* Except as may be ordered otherwise by the presiding hearing examiner, the party applicant for relief shall proceed first at a hearing.

(b) *Burden of proof.* The party applicant shall have the burden of proof.

(c) *Evidence*—(1) *Admissibility.* A party shall be entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Any oral or documentary evidence may be received, but a presiding hearing examiner shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.

(2) *Testimony of witnesses.* The testimony of a witness shall be upon oath or affirmation administered by the presiding hearing examiner.

(3) *Objections.* If a party objects to the admission or rejection of any evidence, or to the limitation of the scope of any examination or cross-examination, or to the failure to limit such scope, he shall state briefly the grounds for such objection. Rulings on all objections shall appear in the record. Only objections made before the presiding hearing examiner may be relied upon subsequently in a proceeding.

(4) *Exceptions.* Formal exception to an adverse ruling is not required

(d) *Official notice.* Official notice may be taken of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice or concerning which the Department of Labor by reason of its functions is presumed to be expert: *Provided,* That the parties shall be given adequate notice, at the hearing or by reference in the presiding hearing examiner's decision, of the matters so noticed, and shall be given adequate opportunity to show the contrary.

(e) *Transcript.* Hearings shall be stenographically reported. Copies of the transcript may be obtained by the parties upon written application filed with the reporter, and upon the payment of fees at the rate provided in the agreement with the reporter.

§ 1905.27 Decisions of hearing examiners.

(a) *Proposed findings of fact, conclusions, and rules or orders.* Within 10 days after receipt of notice that the transcript of the testimony has been filed or such additional time as the presiding hearing examiner may allow, each party may file with the hearing examiner proposed findings of fact, conclusions of law, and rule or order, together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all other parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision of the hearing examiner.* Within a reasonable time after the time allowed for the filing of proposed findings of fact, conclusions of law, and rule or order, the presiding hearing examiner shall make and serve upon each party his decision, which shall become final upon the 20th day after service thereof, unless exceptions are filed thereto, as provided in § 1905.28. The decision of the hearing examiner shall include (1) a statement of findings and conclusions, with reasons and bases therefor, upon each material issue of fact, law, or discretion presented on the record, and (2) the appropriate rule, order, relief, or denial thereof. The decision of the hearing examiner shall be based upon a consideration of the whole record and shall state all facts officially noticed and relied upon. It shall be made on the basis of a preponderance of reliable and probative evidence.

§ 1905.28 Exceptions.

Within 20 days after service of a decision of a presiding hearing examiner, any party may file with the hearing examiner written exceptions thereto with supporting reasons. Such exceptions shall refer to the specific findings of fact, conclusions of law, or terms of the rule or order excepted to, the specific pages of transcript relevant to the suggestions, and shall suggest corrected findings of fact, conclusions of law, or terms of the rule or order. Upon receipt of any exceptions, the hearing examiner shall fix a time for filing any objections to the exceptions and any supporting reasons.

§ 1905.29 Transmission of record.

If exceptions are filed, the hearing examiner shall transmit the record of the proceeding to the Assistant Secretary for review. The record shall include: the application, any request for hearing thereon, motions and requests filed in written form, rulings thereon, the transcript of the testimony taken at the hearing, together with the exhibits admitted in evidence, any documents or papers filed in connection with prehearing conferences, such proposed findings of fact, conclusions of law, rules or orders, and supporting reasons, as may have been filed, the hearing examiner's decision, and such exceptions, statements of objections, and briefs in support thereof, as may have been filed in the proceeding.

§ 1905.30 Decision of the Assistant Secretary.

If exceptions to a decision of a hearing examiner are taken pursuant to § 1905.28, the Assistant Secretary shall upon consideration thereof, together with the record references and authorities cited in support thereof, and any objections to exceptions and supporting reasons, make his decision. The decision may affirm, modify, or set aside, in whole or part, the findings, conclusions, and the rule or order contained in the decision of the presiding hearing examiner, and shall include a statement of reasons or bases for the actions taken on each exception presented

Subpart D—Summary Decisions

§ 1905.40 Motion for summary decision.

(a) Any party may, at least 20 days before the date fixed for any hearing under Subpart C of this part, move with or without supporting affidavits for a summary decision in his favor on all or any part of the proceeding. Any other party may, within 10 days after service of the motion, serve opposing affidavits or countermove for summary decision. The presiding hearing examiner may, in his discretion, set the matter for argument and call for the submission of briefs.

(b) The filing of any documents under paragraph (a) of this section shall be with the hearing examiner, and copies of any such documents shall be served in accordance with § 1905.21.

(c) The hearing examiner may grant such motion if the pleadings, affidavits, material obtained by discovery or otherwise obtained, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision. The hearing examiner may deny such motion whenever the moving party denies access to information by means of discovery to a party opposing the motion.

(d) Affidavits shall set forth such facts as would be admissible in evidence in a proceeding subject to 5 U.S.C. 556 and 557 and shall show affirmatively that the affiant is competent to testify to the matters stated therein. When a motion for summary decision is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denials of his pleading; his response must set forth specific facts showing that there is a genuine issue of fact for the hearing.

(e) Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the hearing examiner may deny the motion for summary decision or may order a continuance to permit affidavits to be obtained or discovery to be had or may make such other order as is just.

(f) The denial of all or any part of a motion for summary decision by the hearing examiner shall not be subject to interlocutory appeal to the Assistant Secretary unless the hearing examiner certifies in writing (1) that the ruling involves an important question of law or policy as to which there is substantial ground for difference of opinion, and (2) that an immediate appeal from the ruling may materially advance the ultimate termination of the proceeding. The allowance of such an interlocutory appeal shall not stay the proceeding before the hearing examiner unless the Assistant Secretary shall so order.

§ 1905.41 Summary decision.

(a) *No genuine issue of material fact.* (1) Where no genuine issue of a material fact is found to have been raised, the hearing examiner may issue an initial decision to become final 20 days after service thereof, unless, within such period of time any party has filed written exceptions to the decision. If any timely exception is filed, the hearing examiner shall fix a time for filing any objections to the exception and any supporting reasons. Thereafter, the Assistant Secretary, after consideration of the exceptions and any supporting briefs filed therewith and of any objections to the exceptions and any supporting reasons, may issue a final decision.

(2) An initial decision and a final decision made under this paragraph shall include a statement of—

(i) findings and conclusions, and the reasons or bases therefor, on all issues presented; and

(ii) the terms and conditions of the rule or order made.

(3) A copy of an initial decision and a final decision under this paragraph shall be served on each party.

(b) *Hearings on issues of fact.* Where a genuine material question of fact is raised, the hearing examiner shall, and in any other case he may, set the case for an evidentiary hearing in accordance with Subpart C of this part.

Subpart E—Effect of Initial Decisions

§ 1905.50 Effect of appeal of a hearing examiner's decision.

A hearing examiner's decision under this part shall not be operative pending a decision on appeal by the Assistant Secretary.

§ 1905.51 Finality for purposes of judicial review.

Only a decision by the Assistant Secretary shall be deemed final agency action for purposes of judicial review. A decision by a hearing examiner which becomes final for lack of appeal is not deemed final agency action for purposes of 5 U.S C. 704.

Signed at Washington, D.C., this 22d day of June 1971.

J. D. HODGSON,
Secretary of Labor.

[FR Doc.71-9179 Filed 6-29-71;8:45 am]

PART XIII - SAFETY SURVEY STUDIES

13.0 Introduction. The Occupational Safety Grant obtained from the U. S. Department of Labor on June 25, 1971, allowed Workmen's Compensation Division personnel to conduct several safety surveys and studies. These studies point out several problem areas in several industries. Backup material is on file and will be used for continued programming in the future.

PART XIII - SAFETY SURVEY STUDIES

13.1 Job Analysis with respect to Safety and Health. It was determined that a survey and job study in areas of high accident frequency, high personnel turnover, and where there is a great number of complaints would be of great assistance to both the Bureau of Safety and Health, and all employers.

The study, which would be assisted by the surveys, would take into consideration human factors, machine failure factors, actual working conditions, and possibly other things as deemed necessary for the situation. The data gathered could be used to determine such things as cost benefit, cost justification, methods, and procedures in areas where modification of processes would be necessary.

Information gathered could be used to develop worthwhile training programs in order to eliminate potential accidents and health hazards. These programs could be set up to fit the specific needs of the industry involved.

With data gathered from the study, it is feasible to assign values to human factors, machine failure factors, working conditions or other information pertinent to the problem and mathematically come up with values which would determine the gravity of the safety or health hazard at hand. It could also be used for cost benefit and justification for the employer's benefit where modification is necessary.

A survey form would have to be developed which would consider procedures used and factors pertinent to the job such as persons, equipment and environment. The form would have to be rather elastic because to develop a form to suit all jobs and all industry is impossible. The persons involved, the equipment and tools, and the environment should be the main consideration. Personal attitude is a big factor to consider; machine repair and general maintenance is another pertinent matter, and working conditions need great consideration. These seem to be the main factors when referring to safety and health.

13.2 Montana Farm Safety Survey Summary.

A. Method of Survey. Farms were selected at random with a tendency toward larger type operations. A total of 100 farm operators were interviewed and, of these, 15 were strictly family operated. This summary is based on the 85 farms that employ persons. (See Map 1 and 2 at end of this § 13.2).

Twenty-six of Montana's 56 counties were represented from every geographic area. The types of farms are as follows:

	Industrial Classification Code
34 Livestock Farms	013
33 Diversified Farms	014
16 Dryland Grain Farms	011
2 Strictly Feedlot Operations	072

A total of four Workmen's Compensation Division, Burreau of Safety and Health employees conducted the survey, usually along with their regular duties; however, a total of 33 work days and 5,350 miles were charged to this project.

B. Employee information. (See Charts 1 and 2 at end of this § 13.2).

Total 85 Farms	Employees per Farm
109 Permanent Employees	1.3
294 Seasonal Employees	3.4
231 Family members	2.7

18 percent of farms report employees live in employers residence on farm.

60 percent of farms report employees live in separate residence on farm.

40 percent of farms report employees live in private residence off the farm.

Living conditions in employees living quarters were basically observed and were found to be of an acceptable level. In every case, electric service, modern toilet facilities, and generally modern living standards were provided. There were a few residences that were not kept or maintained in good condition. These residences were compatible with the poor safety conditions and generally poor housekeeping also found around the premises.

C. Hazardous Machines. When questioned by survey personnel as to their opinion of the most hazardous machine used, 21 percent of the farm or ranch operators said "Tractor".

A breakdown by percentage follows:

Tractor	21%
No Opinion	14%
Grain Auger	11%
Forage Harvester	11%
Hay Baler	7%
All Machines	7%
Combine	6%
Horse	6%
Swather	5%
Front-End Loader	5%
Power Takeoff	5%
Car	1%

The horse was included in the survey. Although not considered a machine, some ranchers use horses for certain jobs with cattle where a machine is not feasible or is impractical.

It is interesting to note that "tractor" was the most hazardous machine. During a 5 year period, Workmen's Compensation Division statistics show that of the farm or ranch related deaths, 36 percent were due directly to "tractor" accidents, such as tractor roll over, or tractor run over. This may be due to the fact that there is an average of 4.5 tractors per farm or ranch, and that it is the most used piece of equipment on the farm or ranch.

D. Toxic Chemical Used:

	Type Used	Percent of Farms
*1.	Insecticides	45%
**2.	Herbicides	54%
***3.	Other	2%
****4.	None	

*1. Major Insecticides for livestock pest control by brand name were Rulene, Corral, and others.

**2. Major Herbicides were for weed control, 2-4D and Carbine.

***3. Other chemicals used were minor, such as dairy equipment acid, dry fertilizer, and mercury for seed treating.

****4. Many farms reported no chemical usage because of custom or contract application of the above chemicals and others, such as: anydrous ammonia, liquid fertilizer and row crop dusting insecticides.

E. Fire Fighting Equipment. Of the 85 agricultural enterprises surveyed, the Workmen's Compensation Division personnel were able to establish the following:

1. Fire Extinquishers in house	44%
2. Fire Extinquishers in shop	64%
3. Fire Extinquishers in vehicles and machines	33%
4. Other fire fighting equipment ranging from water pressure hoses to tank vehicle with pumps	29%
5. No fire fighting equipment	18%

The above equipment consisted of water extiquishers in some cases; however, in most cases the extinquishers were dry or liquid fire suppresant chemicals.

F. Safety Program. There were no formal safety programs in existence on any of the 85 farms surveyed. 74 percent claimed an informal safety program and 26 percent had no program at all.

G. Accidents. Most farm operations report accidents that occur. 54 percent of the operations did report, 23 percent did not, and 23 percent of the persons interviewed were not sure because they just worked there.

H. Types of Insurance Provided:

1. Farm Liability	58%
2. Health and Accident	32%
3. Workmen's Compensation	25%
4. No Insurance	5%

Note: The 58 percent result on farm liability provided appears to be too low because the questionnaire did not specifically ask that question.

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I. First Aid Equipment:

1.	No First Aid equipment on premises	14%
2.	First Aid equipment in house	81%
3.	First Aid equipment in vehicles	15%
4.	First Aid equipment in shop	13%

Many of the farms or ranches had first aid equipment in more than one location. Equipment provided was usually a small basic kit that was in need of replenishing.

J. Explosives. Dynamite was the only explosive found on farms, other than those few persons who load their own cartridges as a hobby;

85% of farms have never used dynamite;

10% of farms have used dynamite;

5% have dynamite stored on the premises, and in every case, storage was inadequate and hazardous. Usually it consisted of just a few sticks stashed away in some old storage shed and in one particular case, it had been there over ten years.

K. Fuel Storage. Of the total 85 farms surveyed 69 percent had fuel storage above ground;

28% stored fuel below the ground;

2% stored fuel both below and above the ground, and

1% stored no fuel.

The operators who stored fuel both above and below ground had diesel above ground and gasoline below ground.

The above-ground storage containers were mainly tanks with a capacity of from 300 gallons to 500 gallons, supported by a wooden frame approximately 8 feet high, gravity feed.

L. Power Equipment Used. As a result of the farm survey, the following data was obtained pertaining to power equipment used:

1.	Tractors	4.5 per farm
2.	Grain Auger	1.6 per farm
3.	1½ Ton Truck	1.6 per farm
4.	Hay Balers	82%
5.	Combine	81%
6.	Swather	80%
7.	Hay Rake	62%
8.	Mower	62%
9.	Other Haying Equipment	58%
10.	Forage Equipment	33%
11.	Other: Crop Harvester, etc.	9%

These figures show what percent of the farms had this equipment or the number per farm. It is interesting to note that the larger dry land farmers and cattle ranchers keep their power equipment in much better repair than the diversified farmers. This is probably an economic factor, characteristic to those types of farming or ranching operations.

M. Safety Equipment Used.

(1) Respirator 32%

Generally found on grain farms and used during combining operations. Some employees in all categories use them when there is an asthma problem.

(2) Welding Helmet 82%

Welding Goggles 81%

Most operations do have a basic work shop and naturally this equipment is used.

(3) Face Shield or clear goggles 78%

This equipment is provided at the grinder in the shop, but rarely used.

(4) Gloves 100%

(5) Safety Shoes 13%

Many cattle ranchers considered cowboy boots the only safety shoe applicable to their operations. Cowboy boots were not included in this summary.

(6) Tractor Roll Bars or Canopies 1.3%

The few roll bars found were of a commercial nature, were factory installed and appeared adequate.

(7) Seat Belts on Machinery 1%

The only seat belts found were on some of those tractors that also had roll bars.

N. Family Farms. In most cases, the 15 family farms surveyed paralleled the farms that hire persons. The Safety Program showed the largest variance. Only 33 percent of the family farms surveyed had an informal program and 67% had no program. This compares with 74 percent of the farms that hire having an informal program, and 26 percent not having a program.

O. Farm Survey Synopsis. It is the concensus of those

Workmen's Compensation Division safety representatives who conducted the survey that there is a definite need for more safety to be initiated in every aspect of farming and ranching. In particular, survey statistics point out the need for regulations and/or education in the following areas: First Aid and fire fighting equipment, safety training, and dynamite storage.

1. Another area of observed poor condition is the farm shop. It is rarely found that three wire (grounded) electric circuits or tools are used. General shop housekeeping is quite often very poor, and many times an open pan of gasoline was found somewhere in the shop. Other basic safety violations of this nature were prevalent.
2. Farm machinery is usually well guarded and shielded by the manufacturer, but is rarely kept in place by the operator.

P. Montana Farm Fatalities. A study of investigations of farm-related fatalities which occurred from July 10, 1965, through May 5, 1971, disclosed the following facts: there were *55 farm fatalities during this 5 year period, of which:

*This number represents only those fatalities that were investigated by Workmen's Compensation, and also does not include highway fatalities.

19 (or 36%) were tractor roll overs;

8 (or 14%) were other tractor type, i.e., power takeoff, etc.

5 (or 9%) were by truck hydraulic hoists

6 (or 10%) were by aerial crop spraying

4 (or 7%) were by electrocution (one by lightning)

2 (or 3%) were by grain screw augers

11 (or 20%) were by various accidents (horse, other machinery)

13.3 FATAL AND DISABLING ACCIDENTS IN LOGGING

A. Introduction

B. Length of time on the job

    1. Graphs

C. Types of Injuries

D. Factors Involved

E. Safety Equipment

F. Violations of Rules

G. Working Outside Job Classification

H. Actions Involved

I. Lumber Industry Distribution (map)

J. Survey on Unloading Overweight Logging Trucks

13.3 Fatal and Disabling Accidents in Logging

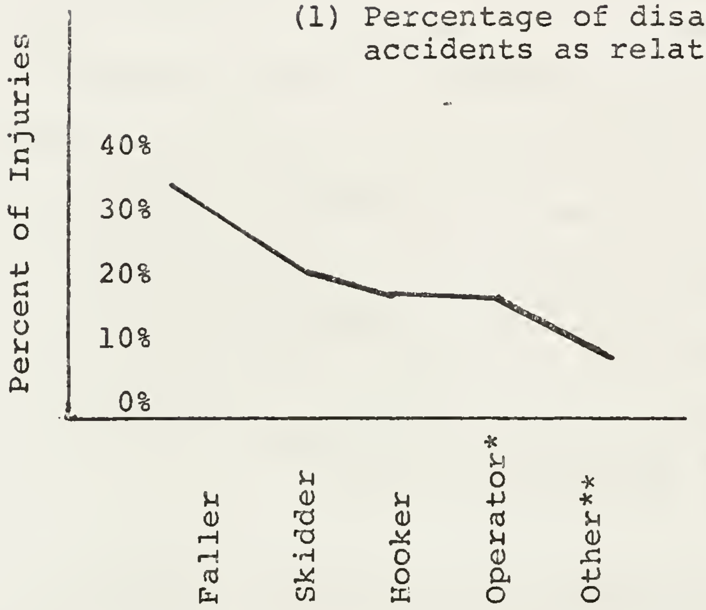
A. Introduction. Information such as length of time on the job, types of injuries, factors involved in the accident, whether or not safety equipment was used, violations of rules and standards, and actions taken by the victim was gathered from a study of fifty-one investigations. These were investigations of fatal and disabling accidents.

The study shows that the greatest percentage of accidents occurred among the fallers, second were skidders, next were hookers and operators, then all others. The following graph (1) emphasizes this point.

Graph 1.

FATAL AND DISABLING ACCIDENTS IN LOGGING

(1) Percentage of disabling and fatal accidents as related to job type:



* Jammer Operator
Shovel Operator
Cat Operator
Dozer Operator
Skagit Operator

** Mechanic
Electrician
Laborer

B. Length of time on the job. The close connection between length of time on the job and the number of accidents is definitely apparent in this study.

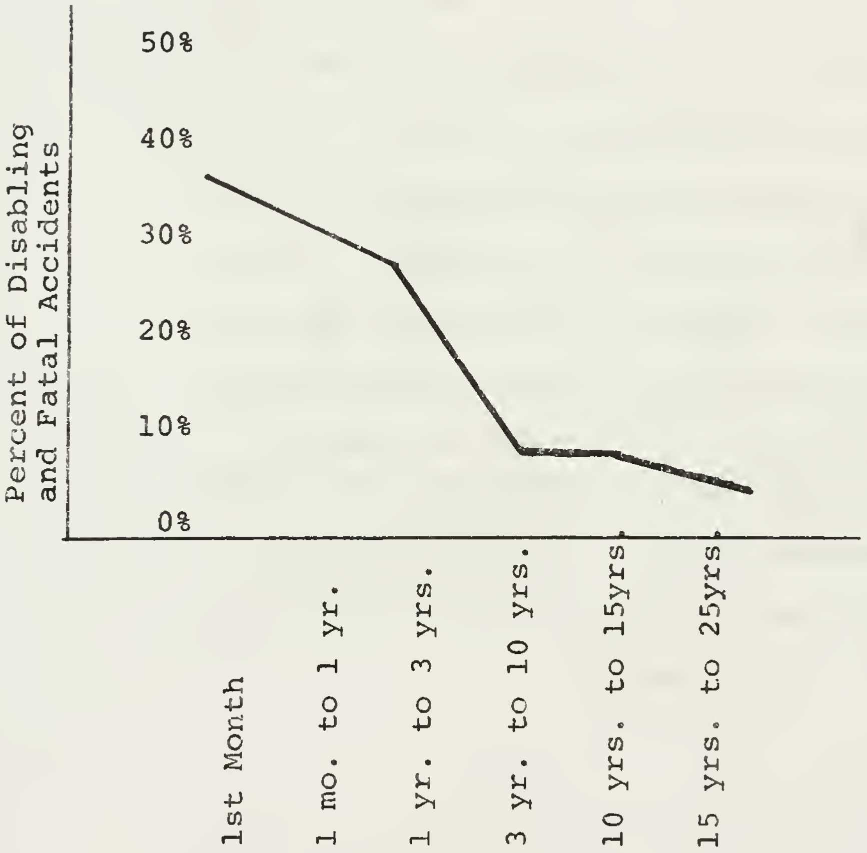
Thirty-two percent of the accidents occurred within the first month of employment. It seems that there is a great lack of training of new personnel. Many of the injuries and fatalities were to fallers. If these men would have been properly informed as to the dangers involved in the job, most of these accidents could have been avoided. Perhaps even better communication between individual employees would help reduce these accidents.

Perhaps a better conception of the relationship between length of time on the job and accidents can be acquired from the following graphs: 2, 3, and 4.

Graph 2.

FATAL AND DISABLING ACCIDENTS IN LOGGING

Percentage of Disabling and Fatal Accidents as related to length of employment.



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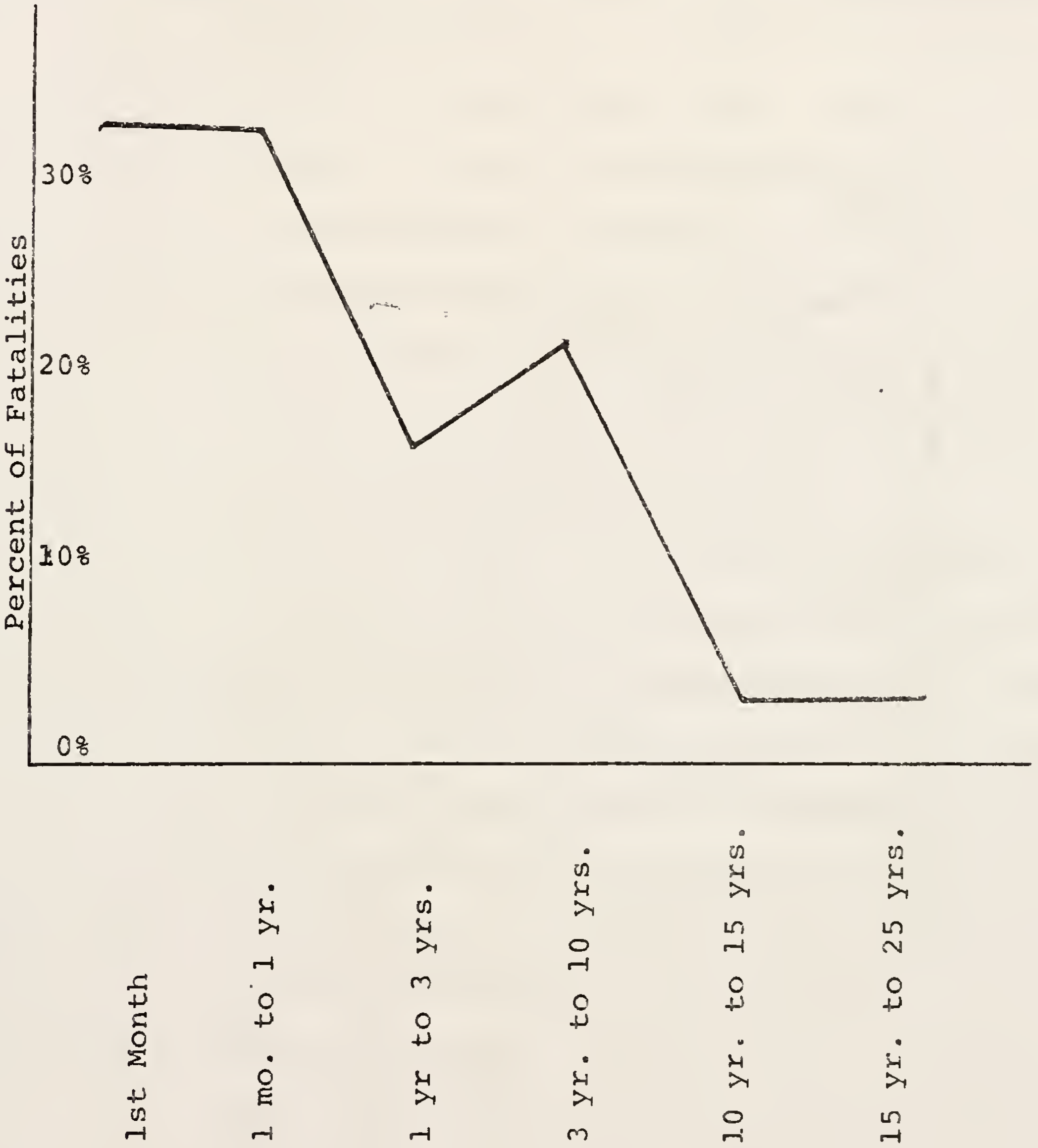
Graph 3.

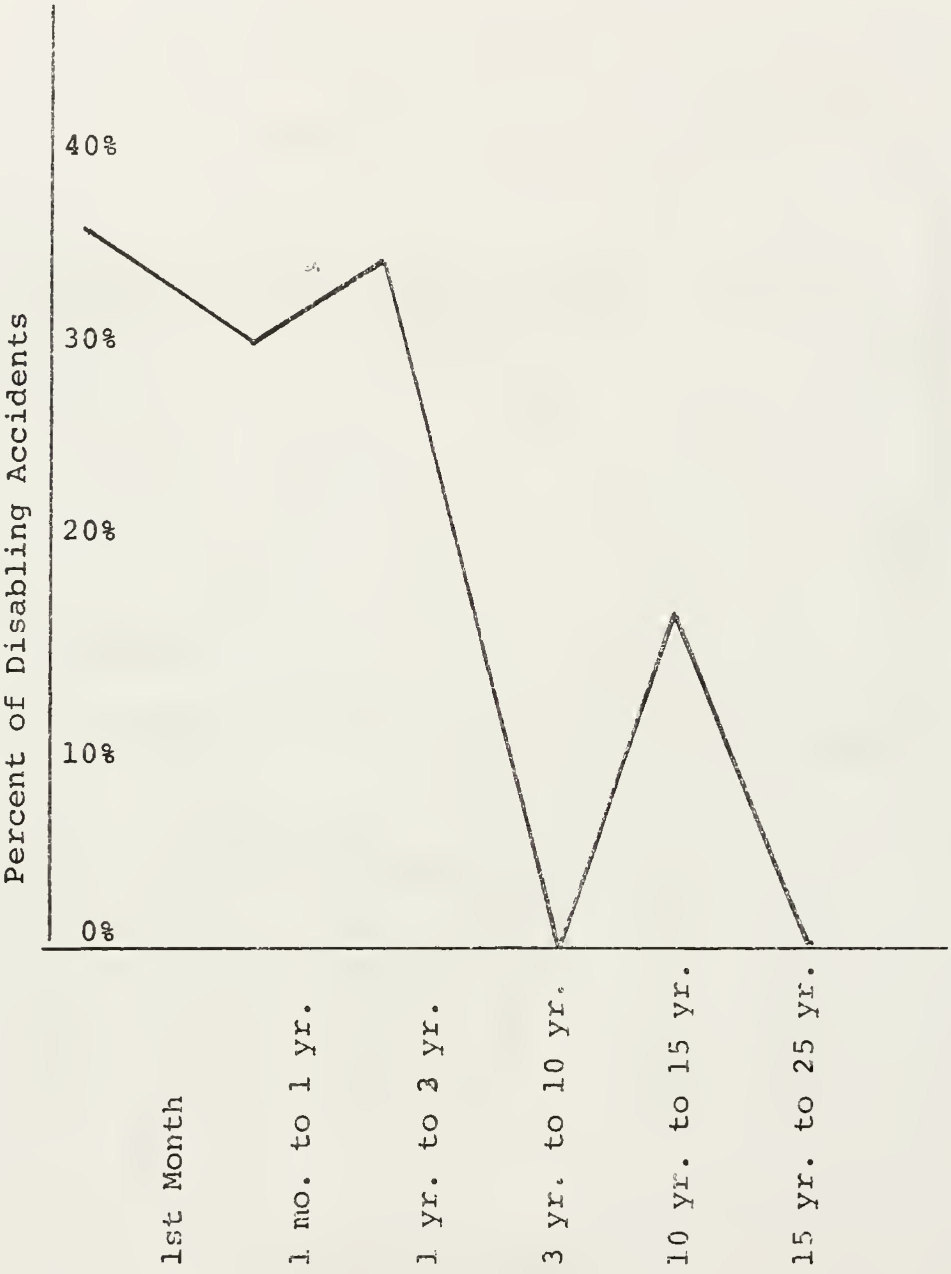
Percentage of fatalities as related to length of employment.



Length of Employment

Graph 4.

Percentage of Disabling accidents as related to length of employment.



Length of Employment

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C. Types of Injuries. Amputations and serious cuts, fractures and/or crushing injuries, and burns were the three classifications that all of the injuries were grouped under. In the logging industry the greatest majority of accidents turned out to be fractures or crushing. In this particular study there were forty-four fracture-type injuries, only three amputations and no burns. All the fatalities except the four heart attacks were crushing injuries.

D. Factors Involved. The three main factors considered in this study were human, conditions, and a combination of human-conditions. Forty-three of the fifty-one accidents investigated involved a human factor. Human factors are not necessarily errors where the victim didn't realize he was in danger; perhaps a lack of instruction again.

E. Safety Equipment. There was only one case in which safety equipment pertinent to the job was not used. In this case, seat belts were not used on a skidder. The man was thrown and received fractures of the skull, back and leg.

F. Violations of Rules. Over half the accident investigations used for this report indicated that there was a violation of a safety rule or standard. Maybe these rules weren't made well enough known, were not enforced as they should have been, or perhaps even training was lacking.

Some cases which involved violations of Montana's Minimum Safety Standards for Logging Departments and Logging Operations:

(1) Section T, paragraph T-15, page 25, brake slipped on live boom left in air.

(2) Section V, paragraph V-2 page 27, faller and skidder working too close together.

(3) Section V, paragraph V-4, page 27, faller struck by another faller's tree.

(4) Section Y, paragraph Y-8, page 42, logging truck over-loaded on one side.

(5) Section S, paragraph S-1, page 22, canopy not strong enough or non-existing.

(6) Section S, paragraph S-12, page 23, very poor brakes.

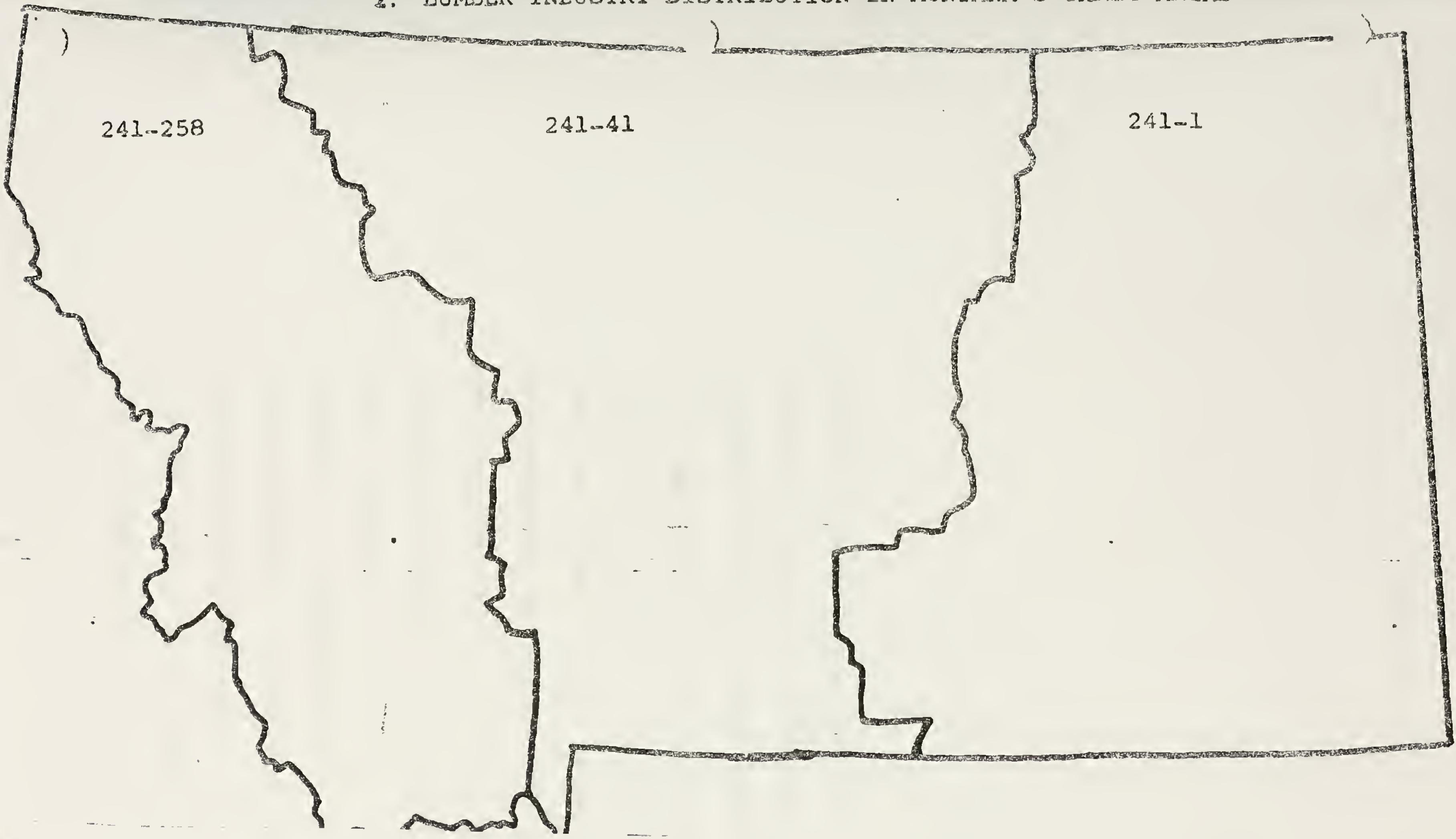
(7) Section Q, paragraph Q-7, page 21, guiding cables with hands.

(8) Section J, paragraph J-5, page 13, not wearing calked boots where work required them.

G. Working Outside Job Classification. An interesting factor to note is that of the four heart attack deaths investigated, three of the victims were working on jobs other than their own. This is possibly also true in other injury and fatality cases. Men outside of their own job classification are usually not as aware of the hazards present and the safety precautions necessary to perform safely.

H. Actions Involved. Reached, fell, and trapped were actions used for this report. Trapped type accidents encompassed forty-one out of fifty-one accidents, an overwhelming majority. The other two types had only three accidents each. Trapped-type accidents include the instances where a man puts himself in a position which ultimately results in his being crushed between objects or struck by an object, the situation where he cannot escape injury or death.

E. LUMBER INDUSTRY DISTRIBUTION IN MONTANA'S THREE AREAS



S.I.C.*	INDUSTRY	Av. Peak Emp.	Emp. Per Firm	Total No. Employers
241	Logging (camps and construction).	1657.6	5.95	279

* Standard Industrial Classification

J. To: Safety Department

Subject: Survey of Methods Used to Unload Overweight Logging Trucks

Place: Lolo weigh station South of Missoula

Time: Between 2:00 and 5:00 P.M. August 18, 1971

Observed 17 trucks weighing in; of these, three were overweight consequently unloaded excess near scale house as follows:

(1) Firm Classified:

Large pine 3,060 lbs. overweight. Trucker backed up to snubbing post, released binders and climbed up side of load, using steel stake for handholds. Attached cable to two smaller logs, dismounted load and pulled truck ahead. Cable slipped off one log so trucker repeated same operation and then replaced binders. This load appeared safe as logs did not extend above stakes. Total time, 15 minutes.

(2) Firm Classified:

Lodgepole 1,520 lbs. overweight. Trucker backed up to unloading area and released binders. As he did so, he quickly ducked under the trailer for a few seconds and then hurriedly ran clear of rig. Then he mounted load at the front of the trailer; immediately behind the tractor, manually unloaded four logs; very unsafe operation because one log on rear of trailer was barely touched by steel stake, i.e. also manual unloading was hazardous because logs shifted positions under foot a couple of times and also when one of the logs was kicked off, the other end tipped up and swung around toward the trucker before falling off. Total time, 17 minutes.

(3) Firm Classified:

Large pine 1,700 lbs. overweight. Trucker backed up to dump pile, released binders (load appeared safe, stakes extended above logs.) Mounted trailer from behind tractor; attached cable to one log, pulled tractor ahead. Cable slipped from log, repeated procedure and then replaced binders.

Total time, 19 minutes.

Comments of Scaleman:

(1) Unloading activities during this particular three hour period were a little less than usual.

(2) Scaleman never tells trucker to unload. He tells him to become legal.

(3) At rare times, when it involves an obviously dangerous load, scaleman will let trucker go, rather than risk an accident.

(4) Most truckers attempt to load legal. There are a few repetitious violators.

Place: Bonner Scale

Time: 8:00 A.M. to 2:00 P.M. August 19, 1971

Observed 20 logging trucks cross scales, of which two were overweight.

(1) Firm Classified:

2,000 lbs. overweight. Trucker used safe procedures, pulled one log off load by snubbing. Good safe load. Total time, 16 minutes.

(2) Firm Classified:

3,000 lbs. overweight. Very dangerous load above stakes. Trucker first attempted to pull logs forward to equalize load; still was overweight so drove back to dumping pile, released binders again and manually rolled two logs off. Entire operation very dangerous because of height of load and temper of trucker. (Pictures taken) Total time, 30 minutes.

This station closed at 2:00 P.M., so we went to the Lolo station again, worked 2:30 to 7:30 P.M. Observed 21 logging trucks cross scales, of which 7 were overweight.

(1) Firm Classified:

3,000 lbs. overweight. Good safe load. Below stakes pulled one big log. Interviewed trucker; he said he saw a trucker killed once by a falling log when the man loosened the binders. Also said unloading is just as safe as the man doing it. Total time, 15 minutes.

(2) Firm Classified:

2,100 lbs. overweight. Fairly safe load. Manually threw off one small log and used cable over side and attached to tire to remove three more. This man was the first trucker wearing a hard hat.

(3) Firm Classified:

1,200 lbs. overweight. Fairly safe load; trucker crawled up side of load. No logs above stakes, pulled one log off.

(4) Firm Classified:

1,400 lbs. overweight. Safe load. Pulled one log over side by running over chain with tire. (Pictures taken)

(5) Firm Classified:

1,500 lbs. overweight. Safe load. Pulled one log off.

(6) Firm Classified:

2,000 lbs. overweight on drivers. Attached largest top log to another truck and dragged it 5 or 6 ft.; overhang on rear of load. Safe load and procedures.

(7) Firm Classified

1,300 lbs. overweight. Safe load. Pulled one log at snubbing post.

Place: Bonner Scale

Time: 8:00 to 10:00 A.M. August 20, 1971

Observed 8 logging trucks weigh in. No overweight trucks. 10:15 to 12:00 noon observed 6 logging trucks weigh in at West Missoula scale; no overweight trucks.

SUMMARY OF SURVEY TO STUDY METHODS USED TO UNLOAD OVERWEIGHT LOGGING TRUCKS

Place: Three weigh stations North, South, and West of Missoula

Total hours of observation: 15 hours

Total No. of Logging Trucks weighed: 72

Total No. of Logging Trucks overweight: 12 (1 out of 6 or 16.6%)

Average lbs. overweight: Approximately 2,000

Recognized Unsafe Conditions and Practices

(1) Hard hats practically non-existent. (1 out of 72)

(2) Logs sometimes extend above trailer stakes.

(3) Some drivers do not seek protection under the load when they release the load binders.

(4) Some drivers do not mount or dismount load safely, Safe procedure is up the front or rear of load, not up the side.

Suggested Code and/or Legislative Amendments

(1) Hard hats must be worn by all drivers at all times when they are outside the truck cab.

(2) Load stakes must extend to the highest point of every load.

13.4 FATAL AND DISABLING ACCIDENTS IN WOOD PRODUCTS INDUSTRY

(SAWMILLS, MILLWORK, MISC.)

A. Introduction

B. Length of Time on Job

Related Graphs (1, 2 & 3)

C. Types of Injuries

D. Factors Involved

E. Safety Equipment

F. Violations of Rules

G. Actions Involved

H. Lumber Industry Distribution (Map)

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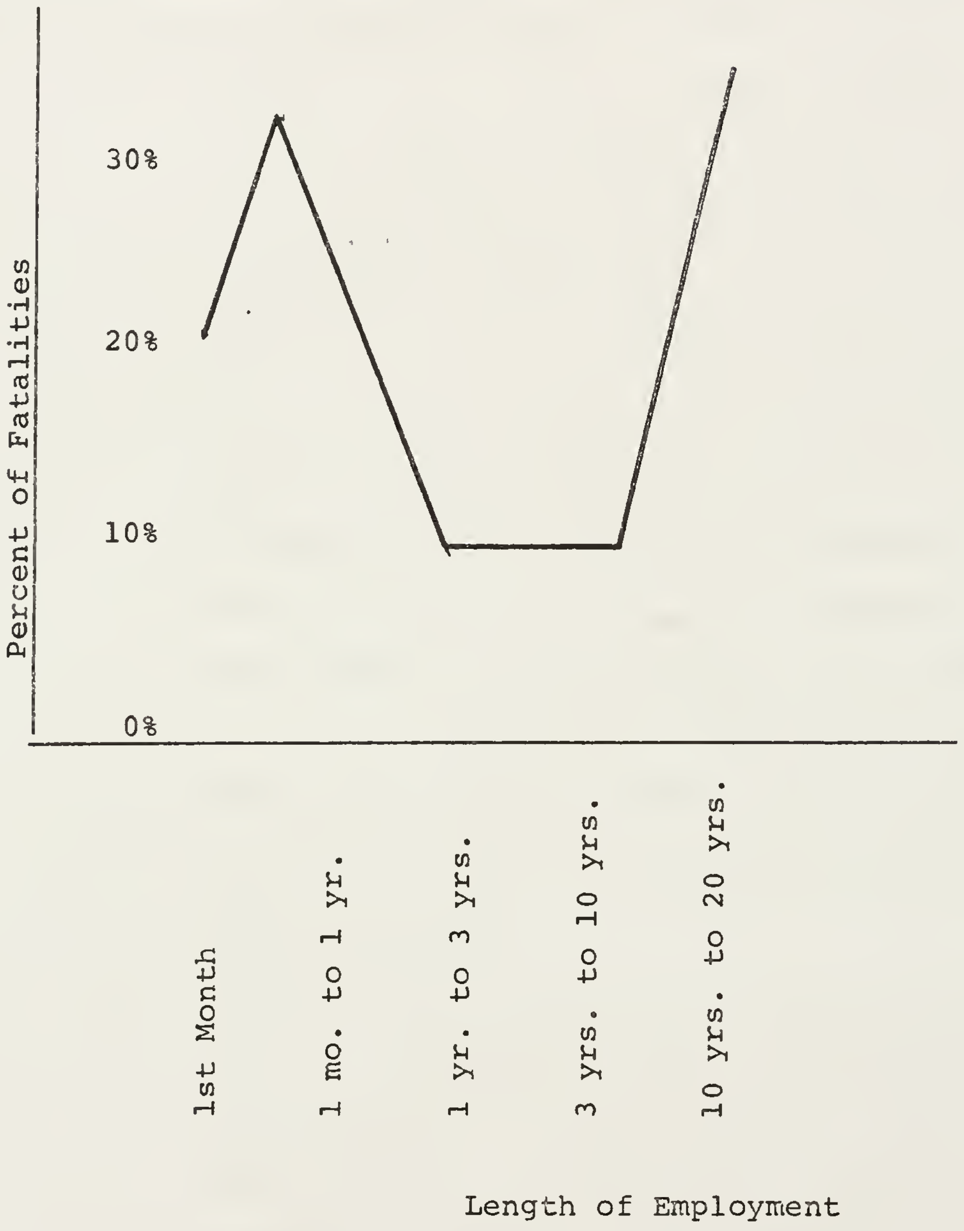
13.4 Fatal and Disabling Accidents in Wood Products Industry (Sawmills, Millwork, Misc.)

A. Introduction. A study was made of fifty-seven investigations of disabling and fatal accidents in the wood products industry. The investigations considered were from July 1, 1968 to June 30, 1972. Information gathered from these investigations were: length of time on the job, types of injuries, factors involved in the accident, use of safety equipment, violation of safety rules and standards, and actions involved by the victim. It was observed that the highest rate of injuries were to saw operators. These injuries were usually amputations and severe cuts of the nonfatal nature. The other forty-seven injuries or fatalities involved thirty-four other job descriptions.

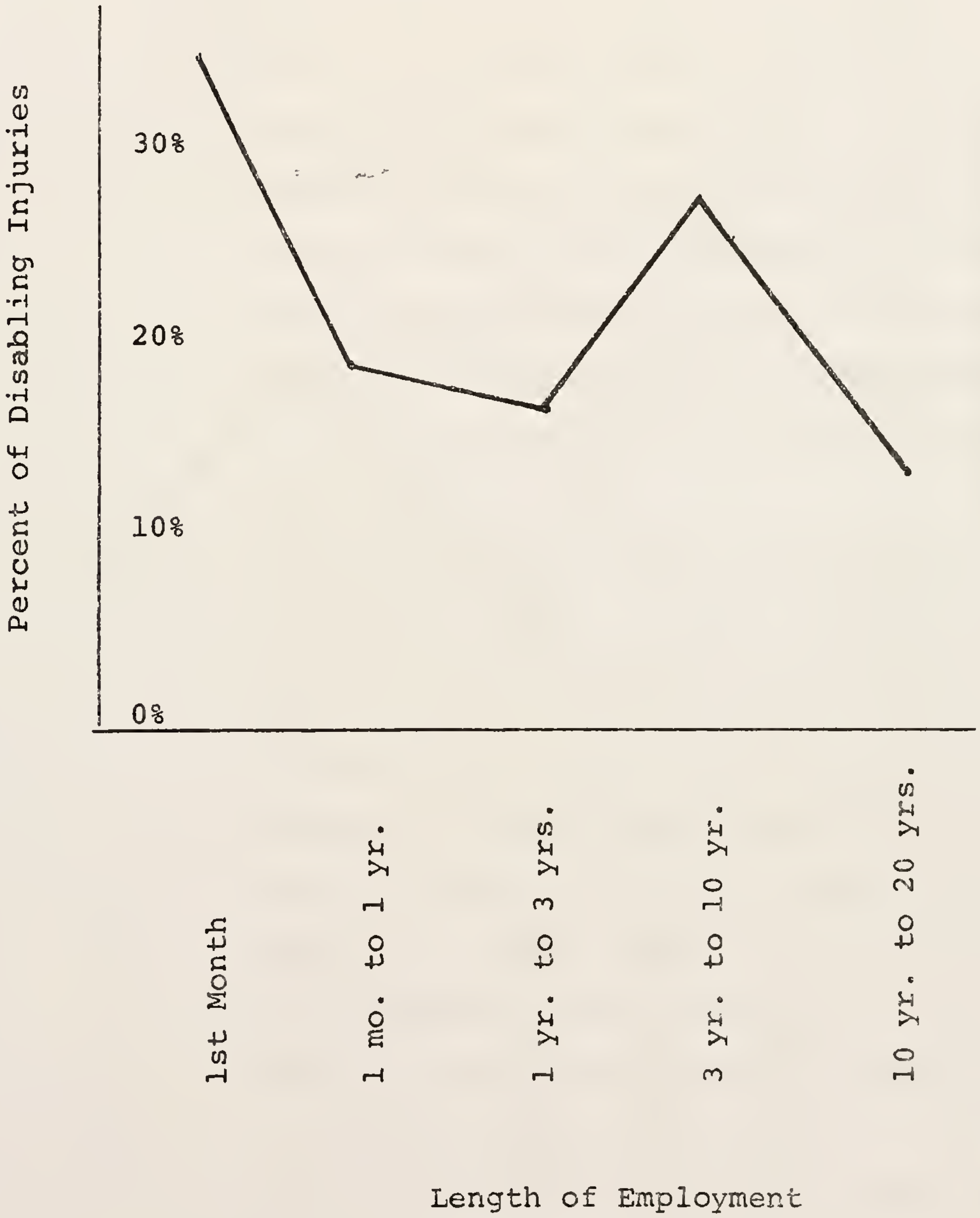
B. Length of time on the job. There seems to be a definite relationship between the number of accidents and the length of time on the job. The new men, the ones on the job a month or so, have the largest percentage of accidents. This suggests a lack of adequate pre-training for the job, a lack of safety knowledge for the job or machine being used, and perhaps even a lack of communications between new men and experienced men.

The following graphs (1, 2, & 3) might give a better idea along this line:

Percent of Fatalities as related to length of employment in the Wood Products Industries.



Percent of Disabling Injuries as related to length of employment in Wood Products industry.



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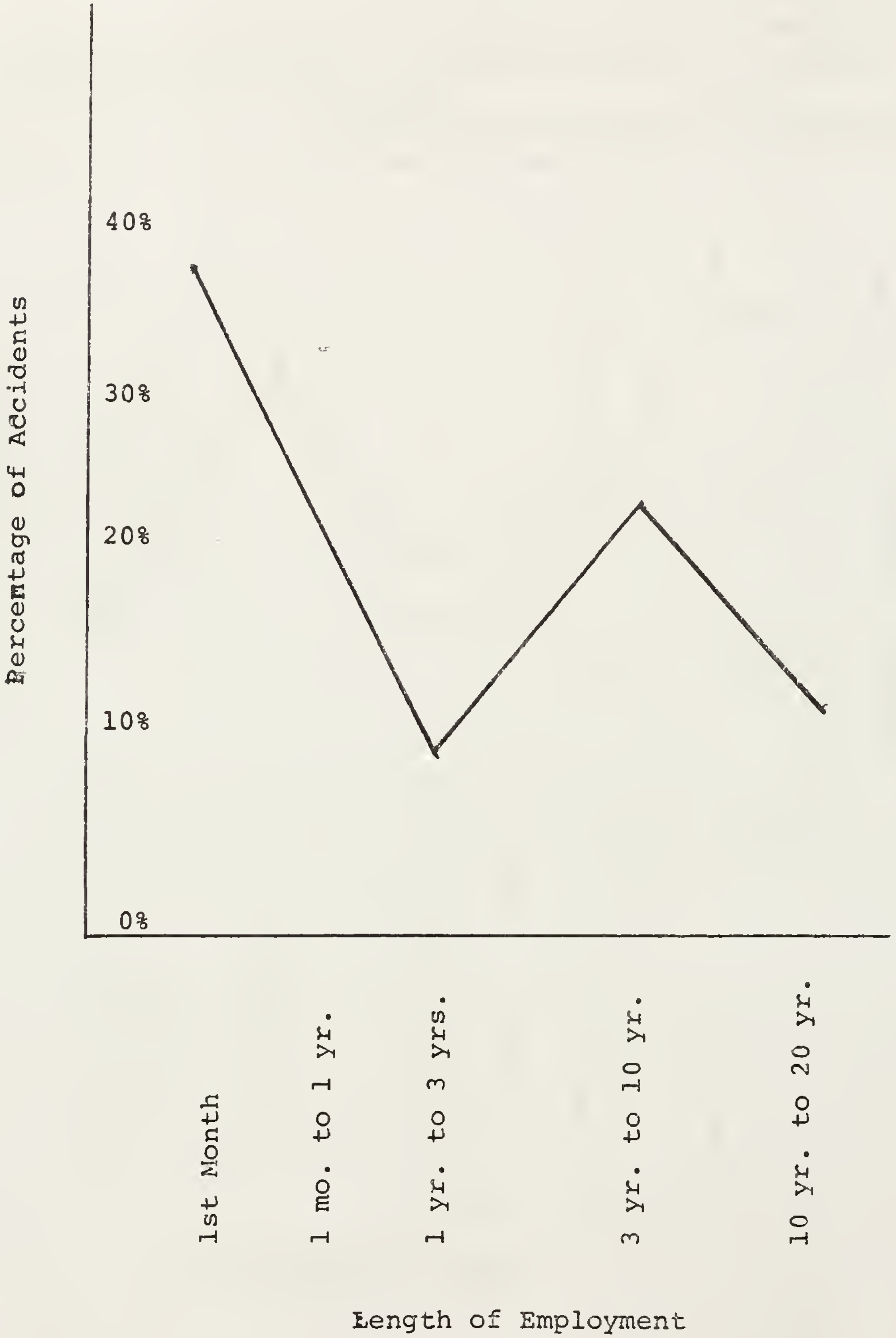
Percent of Fatalities and Disabling Injuries as related to length of employment in the Wood Products Industry.



C. Types of Injuries. Types of injuries, which in the wood products investigations on file, were divided into three main groups: amputations and serious cuts, fracture and crushing injuries, and burns. In the fifty-seven cases studied, twenty-eight were amputation-type accidents, twenty-three were fracture-type accidents and four were burns. There were also two heart attack victims. The amputations outnumber both other groups; however, the only group which had fatalities were the fracture and crushing injuries. In this group eight of the twenty-three injuries were fatal.

D. Factors Involved. There were three main factors considered in the injuries. They are the human-factors, conditions and a combination of human-factors-and-conditions. Human-factors outnumbered all other factors by more than two-to-one. The number of fatalities due to human-factors also outnumbered the other factors by two-to-one. It is also interesting that there was only one injury that was termed unavoidable, an accident with no human or condition factors.

E. Safety Equipment. Surprisingly enough there were only seven of fifty-seven injuries in which the the victim failed to use safety equipment which was furnished or required; however, of these seven accidents, two were fatalities.

Some safety equipment which should have been in use at the time of these accidents was:

(1) No hard hat in two cases; one was a fatality.

(2) Loose clothing was worn around machines, consequently the clothing caught in a pulley.

(3) Loafer type shoes were worn instead of work boots, on slippery stairs, resulting in a fatality.

(4) Victim used his hand to clear a belt pulley of a block of wood while the pulley and belt were in motion.

(5) A planer, being used without a guard, resulted in an amputation.

(6) A millwright failed to test atmosphere with an explosion meter before welding; the result was severe burns.

F. Violation - Rules. Under this category, plant rules and regulations, as well as state standards, were considered. There were thirty-nine of the fifty-seven investigations which involved a violation of a rule or standard, practically 70 percent. This shows that perhaps there should be more effort on the part of management to enforce safety and health rules and standards.

Violations of Montana's Minimum Safety Standards for Sawmill, Woodworking and Allied Industries which resulted in disabling injuries and fatalities were:

(1) Chapter III, paragraph 3.7, page 23:

This was the most common section violated. In most cases, repairs were made with machines still in operation. Repairs are to be made with the power source tagged out and, when practical, secured with a lock.

Of the thirty-two violations of rules and standards this one was violated 11 times, over one-third.

(2) Chapter V, paragraph 5.29, page 38, no guard on chain sprocket.

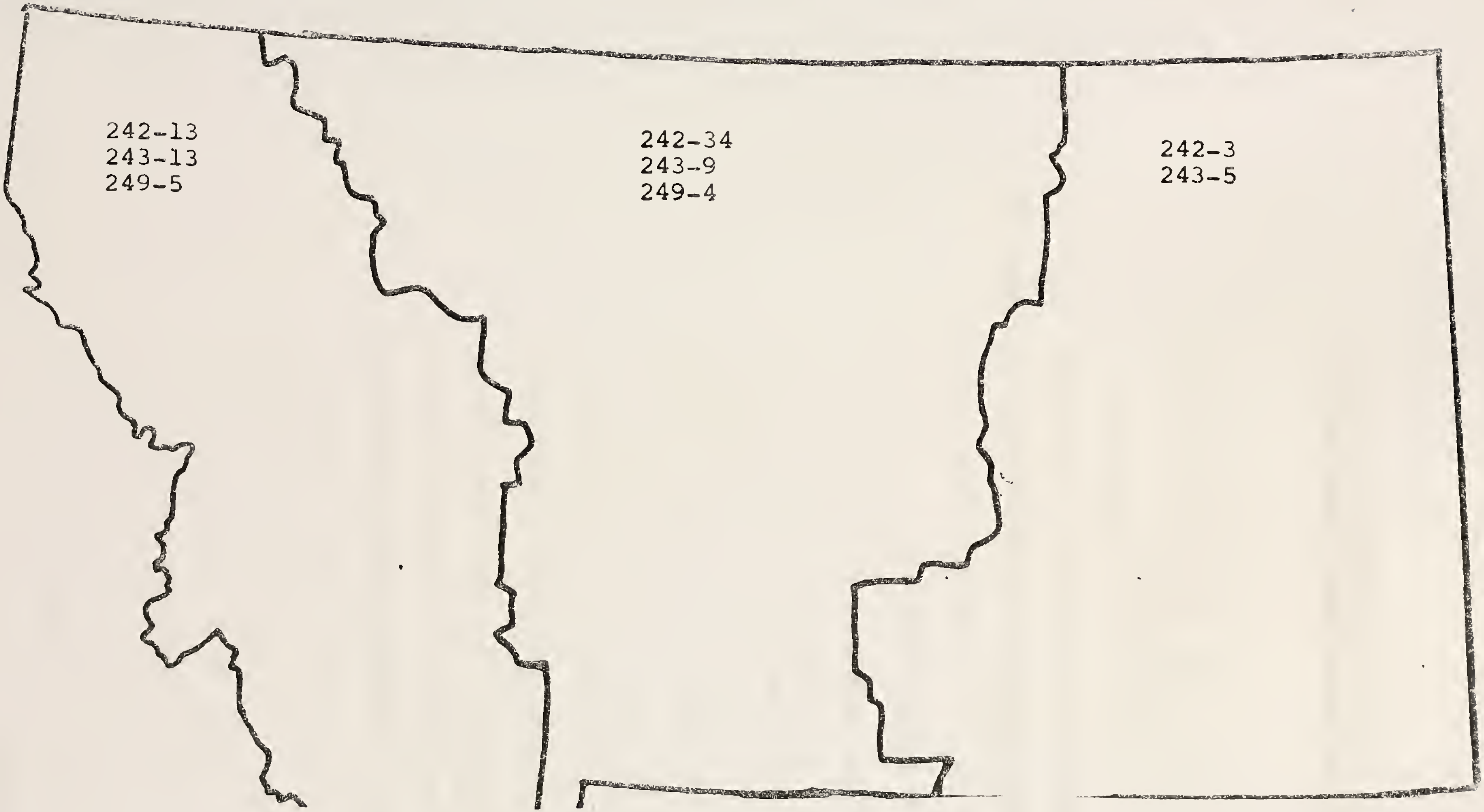
(3) Chapter V, paragraph 5.18, page 36, walking too close to unguarded release chain.

(4) Chapter V, paragraph 5.5, page 34, lumber pile fell on victim, fatal.

(5) Chapter IV, paragraph 4.19 (a), page 31, vehicle and foot traffic using same road as a walkway.

G. Actions Involved. Consideration was taken of three types of actions: reached, fell, and trapped. Although there were more accidents involving reaching, there were more fatalities in the trapped situation. In most cases, the reached accidents were amputations and cuts, the fell accidents involved fractures, and the trapped accidents were fractures and crushings.

LUMBER INDUSTRY DISTRIBUTION IN MONTANA'S THREE AREAS


242-13
243-13
249-5
242-34
243-9
249-4
242-3
243-5

S.I.C.*	INDUSTRY	AV. PEAK EMP.	EMP. PER FIRM	TOTAL NO. EMPLOYERS
242	Sawmills and Planing Mills.	5351.3	39.94	134
243	Millwork, veneer, plywood prefab.	1241.	51.71	24
249	Misc. Wood Products	143.6	8.45	17

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* Standard Industrial Classification

13.5 FATAL AND DISABLING ACCIDENTS IN CONSTRUCTION

A. Introduction

   (1) Graph Comparing Job Title and Percentage of Injuries

B. Length of Time on the Job

   (1) Related Graphs

C. Types of Injuries

D. Factors Involved

E. Safety Equipment

F. Violation of Rules

G. Actions Involved

H. Construction Industry Distribution Map

13.5 Fatal and Disabling Accidents in Construction

A. Introduction. To compile a report of an analysis on the construction industry, investigations of eighteen fatal and seventy-seven disabling accidents on file at the Bureau of Safety and Health were used. Information was utilized for this report such as type of injury, human and condition factors involved in the accident, whether or not safety equipment was used, if there were violations of rules and/or standards, action taken by the victims, and length of time on the job.

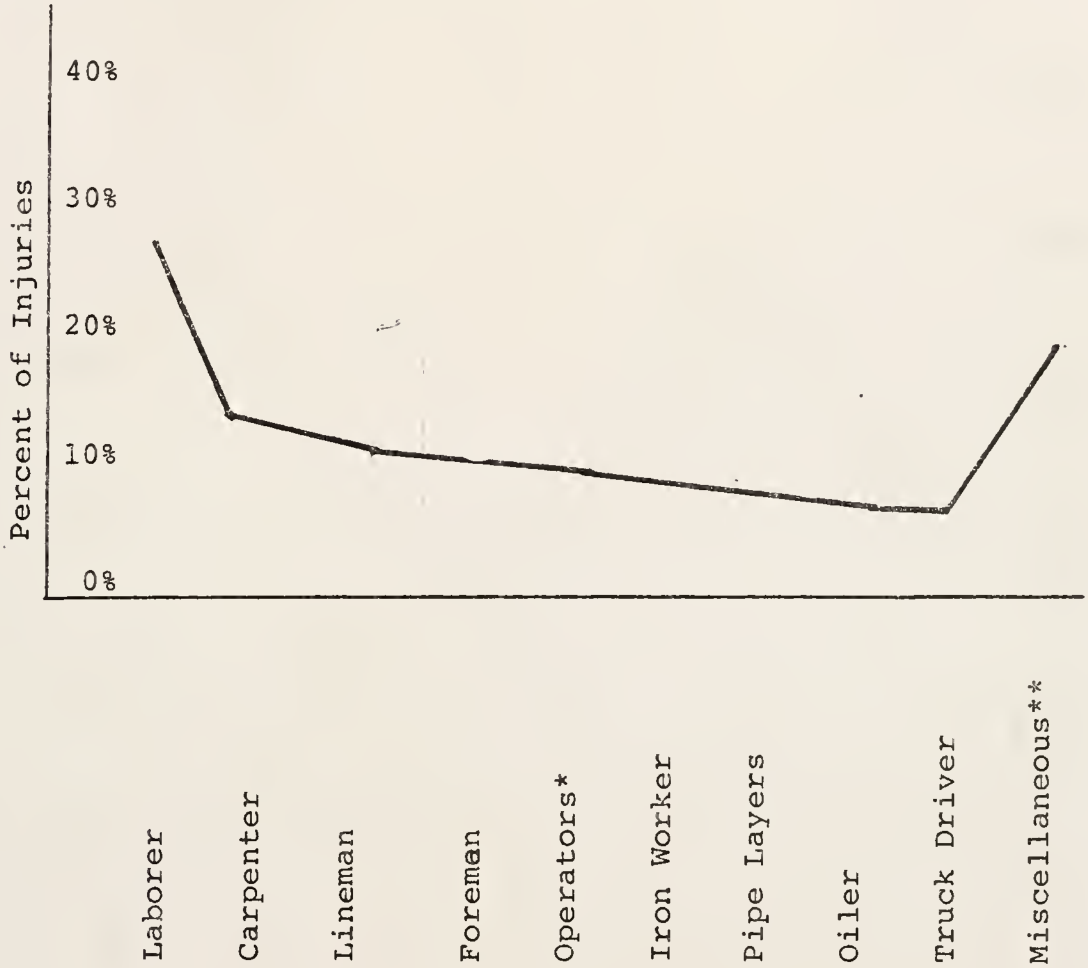
The study shows that the greatest percentage of accidents occur among laborers, and second are among carpenters. The following graph (1) illustrates this fact and compares them with other construction occupations.

B. Length of time on the Job. This study reveals a definite relationship between accidents and length of time on the job. Twenty-eight percent of the accidents investigated occurred within the first month of employment and thirty-six percent in the first year. It would be well to note that the length of time on the job has nothing to do with job experience. Each new job is different, from which we may conclude that there is a lack of employee training and a lack of employer supervision.

The following three graphs (2),(3),(4) will give a better visual concept of the relationship between length of time on the job and disabling and fatal accidents. First fatal and disabling (2) are combined to show an overall view, then they are spearated to show a comparison of fatal (3) and disabling (4) accidents.

GRAPH 1

Percentage of Disabling and Fatal Accidents as Related to Job Type.



*Crane Operator

Cat Operator

Heavy Equipment Operator

** Corp. of Engineers Inspectors

Welder

Plumber

Roofer

Hod Carrier

Mud Mixer

Cement Finisher

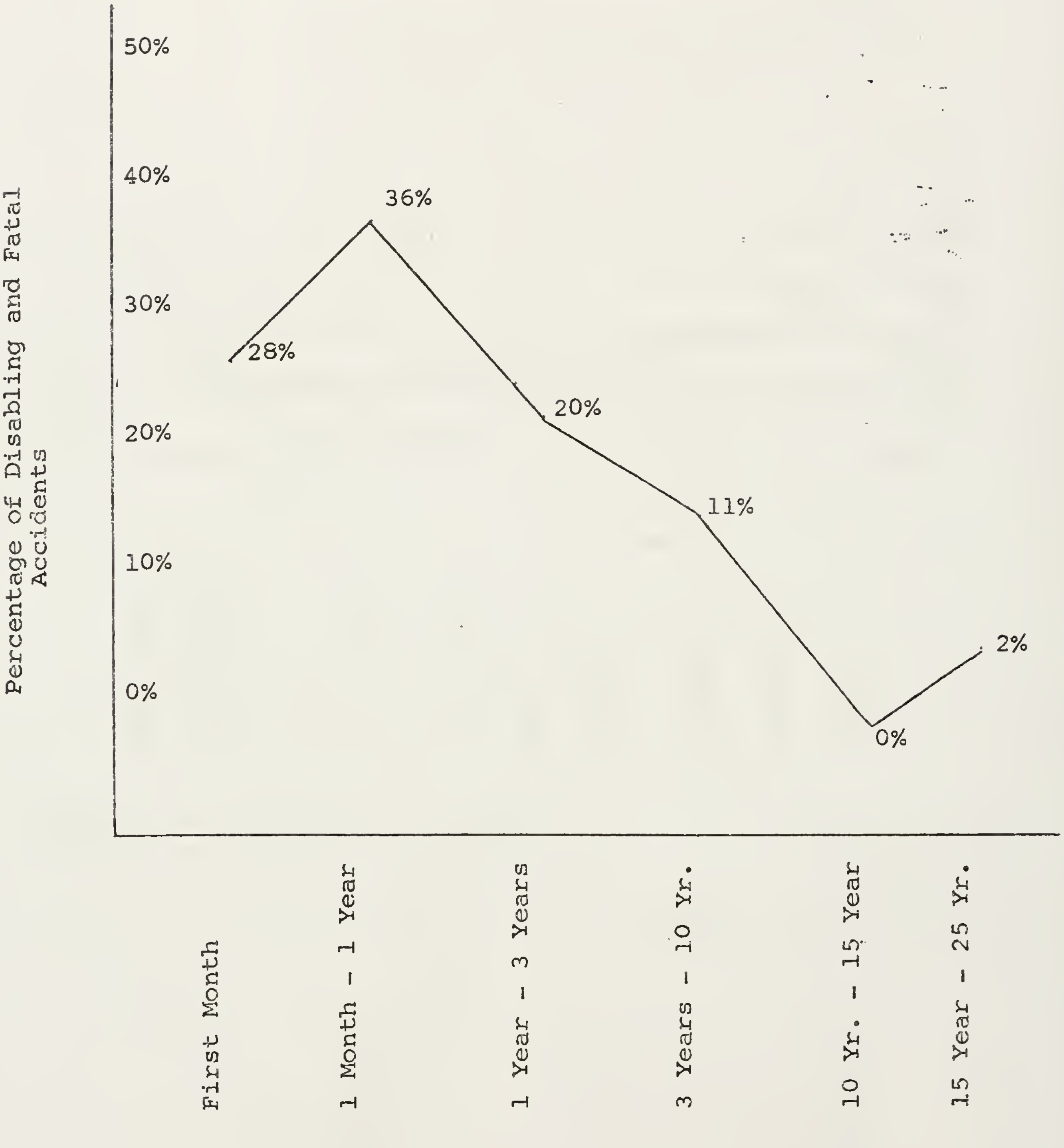
Tile Helper

Electrician

6/28/72

GRAPH 2

Percentage of Disabling and Fatal Accidents as Related to Length of Employment



LENGTH OF EMPLOYMENT

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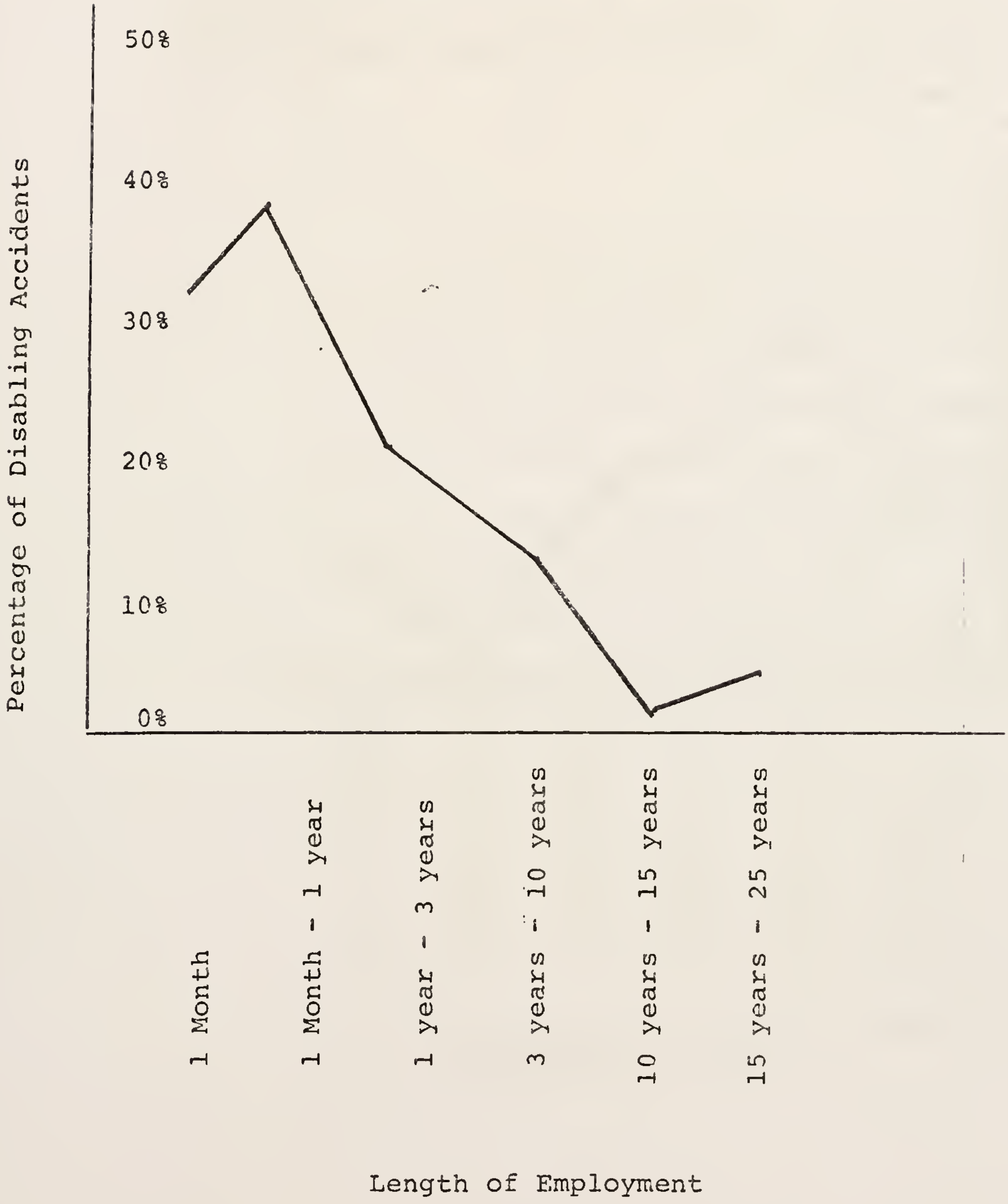
GRAPH 3

Percentage of Disabling Accidents as Related to Length of Employment.



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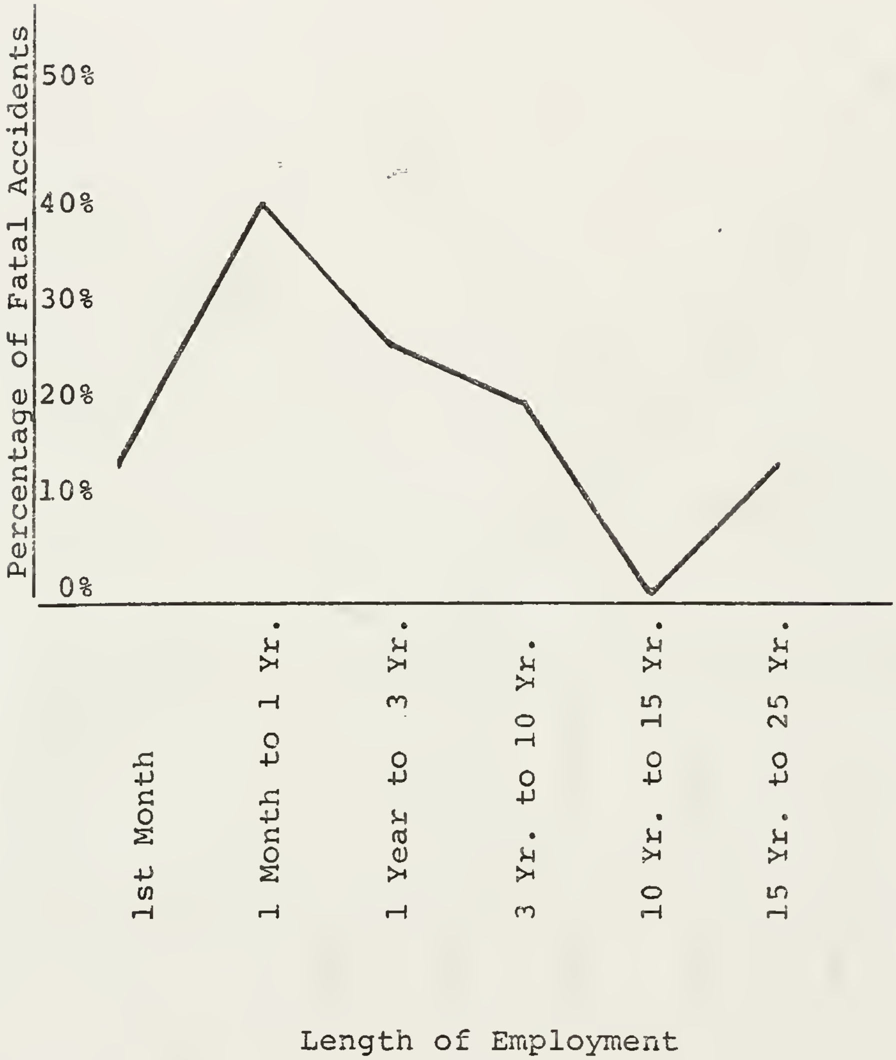
GRAPH 4

Percentage of Fatal Accidents as Related to Length of Employment



C. Types of Injuries. Amputations and serious cuts, fractures and crushing injuries, burns, electric shock and strains were the five classifications under which all injuries were grouped.

In the contruction industry the greatest majority of injuries were fractures and crushing injuries, forty-five percent of the total.

Of the eighteen fatalities, thirteen were crushing injuries, about seventy-two percent. Two of the fatalities were caused by electric shock and three were heart attacks.

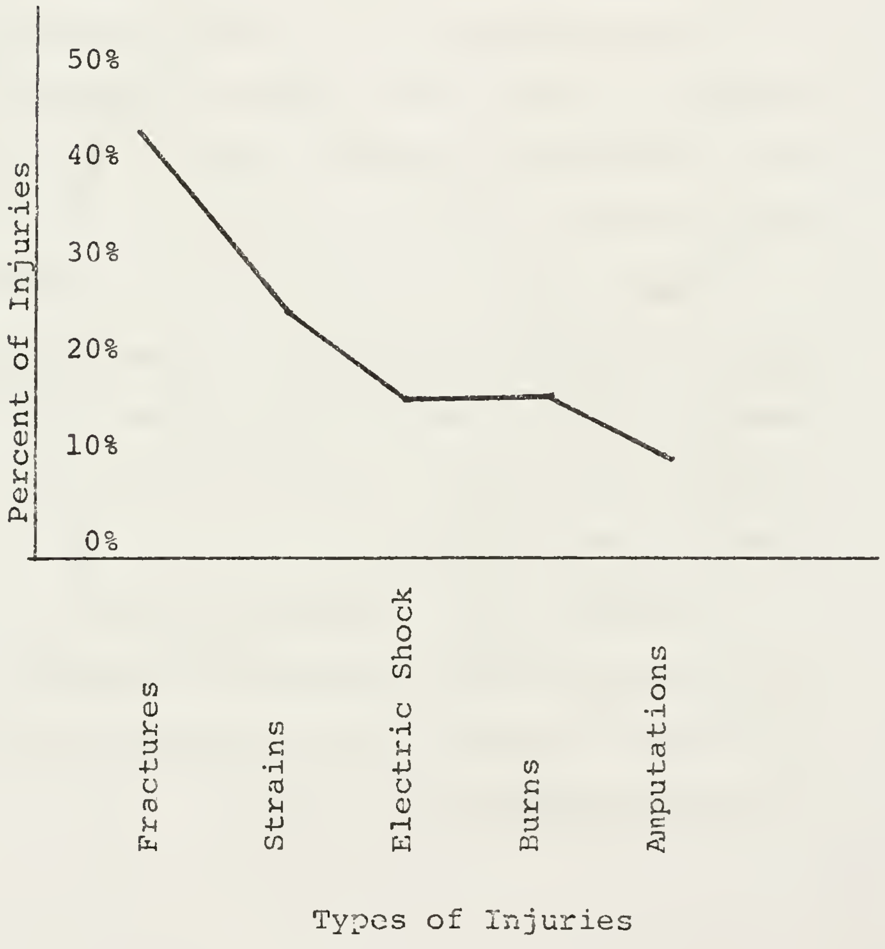
The percentage here adds up to slightly more than one-hundred percent because in several cases of electric shock, severe burns also resulted, therefore, resulting in a double count in some instances.

Perhaps a better conception of the relationship between percentage of injuries and type of injuries can be acquired from the following graph (5).

GRAPH 5

FATAL AND DISABLING ACCIDENTS IN CONSTRUCTION

Percentage of Injuries as Related to Type of Injuries



6/28/72

D. Factors Involved. The three main factors considered in this study were human, condition, and a combination of the two. Fifty-two of the ninety-five accidents investigated were directly related to human factors. This is fifty-five percent of the total. Human errors are not necessarily errors in judgment. It is entirely possible that the victim did not realize he was in danger, as in the case where ditches are not shored, braced or cut to an angle of repose. In this case, a lack of safety instruction, knowledge and supervision can be deduced. When it is considered that eighteen of the accidents involved ditch cave-ins, adequate ditch protection should be of extreme concern to both employees and employers.

E. Safety Equipment. In approximately two-thirds of the accidents, safety equipment such as hard hats and goggles were used which quite likely reduced the severity of the injury. If the other one-third would have been provided and safety equipment used, they would not have been as seriously injured or killed.

F. Violation of Rules. Seventy-seven percent of the investigations studied involved a violation of a safety rule or standard. It is concluded that the rules were not made well enough known and the supervisor failed to enforce these rules.

Some of the most common violations of the Minimum Safety Standards for the Construction Industry in Montana which involved disabling or fatal accidents were as follows:

(1) Chapter II, Section 62J - Backing trucks without a signalman who has a clear view of the driver and the area behind the truck.

(2) Chapter IV, Sections 2 and 3 - Employees working in excavations over four feet in depth without sides being shored, sloped to the angle of repose, or other protec- devices provided.

(3) Chapter VI, Section 3 - Employees were riding on the load and ball of a crane.

(4) Chapter VI, Section 6 - Employees were working in an elevator shaft while the elevator was in operation.

(5) Chapter VIII, Section 8 - Guard rails and toe boards were not used on a scaffold which was over ten feet above the ground.

(6) Chapter XI, Section 1 - An employee was using a propane bottle with a pipe attached

as a torch. No regulation was used.

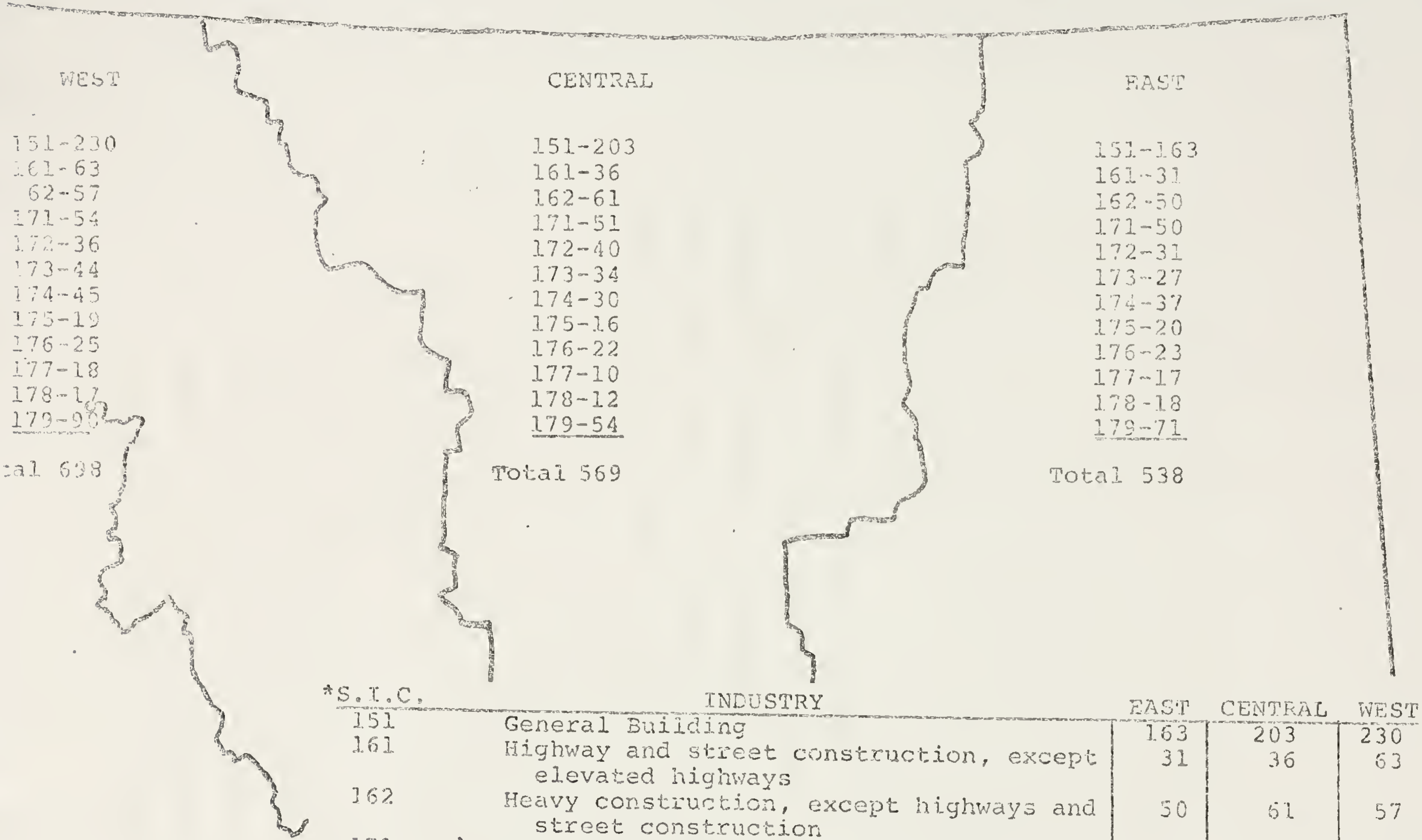
(7) Chapter XI, Section 6 - When transporting cylinders by a crane or derrick, a cradle, boat, or suitable platform shall be used. Valve caps shall be in place when provided.

(8) Speeding by truck drivers on public roads, i.e. 60 miles per hour in a 30 mile per hour zone resulted in a fatality and several serious injuries.

G. Actions Involved. Reached, fell, and trapped were the actions used for the purpose of this report. Trapped type accidents encompassed sixty percent of the accidents. The other two actions, reach and fell, account for seventeen percent and twenty percent respectively.

Trapped type accidents include instances where a man puts himself in a position which ultimately results in his being crushed between objects or struck by an object, the situation where he cannot escape injury or death. A very good example of this is men working in an unshored ditch.

CONSTRUCTION INDUSTRY FATAL AND DISABLING INJURIES DISTRIBUTION IN MONTANA'S THREE AREA


WEST
151-230
161-63
62-57
171-54
172-36
173-44
174-45
175-19
176-25
177-18
178-17
179-90
al 698
CENTRAL
151-203
161-36
162-61
171-51
172-40
173-34
174-30
175-16
176-22
177-10
178-12
179-54
Total 569
EAST
151-163
161-31
162-50
171-50
172-31
173-27
174-37
175-20
176-23
177-17
178-18
179-71
Total 538

*S.I.C.	INDUSTRY	EAST	CENTRAL	WEST	90	ENTIRE STATE
151	General Building	163	203	230	16	612
161	Highway and street construction, except elevated highways	31	36	63	23	153
162	Heavy construction, except highways and street construction	50	61	57	2	170
171	Plumbing, Heating, and Air Conditioning	50	51	54	4	159
172	Painting, paper hanging and decorating	31	40	36	4	111
173	Electrical work	27	34	44	2	107
174	Masonry, stonework, tile setting and plastering	37	30	45	4	116
175	Carpeting and wood flooring	20	16	19	0	55
176	Roofing and sheet metal work	23	22	25	3	73
177	Concrete Work	17	10	18	2	47
178	Water well drilling	18	12	17	1	48
179	Miscellaneous Speci					

*Standard Industrial Code

MONTANA DEVELOPMENTAL PLAN FOR OCCUPATIONAL SAFETY AND HEALTH

HEALTH SURVEY SUMMARIES

13.6 Introduction

A. Auto Repair

B. Wood Products

C. Non Ferrous

D. Oil Refineries

E. Boilermakers and iron works, welding, and machine shops

F. Construction

G. Implement dealers

H. Grain Elevators

I. Car washers

J. Newspaper and print shops

K. Tire recapping

L. Dry cleaners

M. Warehousing

N. Plumbing and sheet metal

O. Cement ready mix

13.6 Introduction. Occupational health surveys were initiated January 1, 1972 under planning grant money. These surveys were done by an Industrial Hygienist until February 15, 1972, when an OSH representative was hired to assist in this work. To date, approximately 120 surveys have been made with plans to continue on into the summer and fall, in order to more accurately define our industries as to future inspection priority and size of staff needed to carry on this work adequately.

At the present, over 20 different type industries have been surveyed to determine health hazards or potential health hazards. Surveys have covered about two percent of the working force in the state. Industries covered to date have been the following:

Non Ferrous
Wood Products
Oil Refineries
Sugar Refineries
Auto Repair
Construction
Flour Mills
Freight Warehouse
Implement Dealers
Power Companies
Welding and Machine Shops
Tire Recapping
Car Wash
Vo Tech
Grain Elevators and Feed Mills
Dry Cleaners
Printing Shops
Newspaper Shops
Boilermakers and Iron Works
State Highway Maintenance Shops

Based on survey data, the following table gives industries surveyed, number of those type industries in the state and number of employees, hazards or potential, and assignment of inspection priority:

Industry	Number	Employees	Health Hazard or Potential	Inspection Priority
Wood Products	317	7700	Noise, dust, CO	1
Non Ferrous	9	5000	Noise, SO2, CO dust, fumes	1
Oil Refineries	11	700	Hydrocarbons, noise	2
Sugar Refineries	3	882	Dust, noise, odor	2
Auto Repair and Gas Service Stations	1380	8200	CO, hydrocarbons, noise	1
Construction (Heavy) (Highway & Street)	210	3400	CO, dust, noise, NO2	2
Flour & Other Grain Mills	21	442	Noise, dust	2
Grain Elevators	174	1114	Hg, dust, noise	2
Freight Warehouse	33	110	CO	4
Implement Dealers (Repair Shops)	340	3000	Hydrocarbons, noise CO, NO2	2
Welding, Machine Shop & Iron Works	40	380	Hydrocarbons, CO noise, fumes	2
Tire Recapping	14	79	Hydrocarbons, fumes dust	2
Dry Cleaning	120	570	Chlorinated Hydrocarbons	3
Print & Newspaper	108	1725	Noise, Pb fumes Hydrocarbons	2

Other industries needed to be surveyed include cement plants, talc mills, phosphate plants, maintenance shops of city, county and state divisions, oil and gas drilling operations, and any others that may be necessary. Roughly, it appears that employees in industries of the type surveyed and those which yet need to be surveyed, number between 30,000 and 40,000. This represents approximately 20% of Montana's working force and about 2700 establishments.

A. Auto Repair. Auto repair areas are generally found to be housed in an old building with poor ventilation systems, spray booths that are either non existant or poorly ventilated, and solvents scattered throughout the areas. The paper 3M mask is most widely used and is not acceptable for spray painting. Chlorinated hydrocarbons are sometimes used as solvents without adequate ventilation. Excessive noise operations are, use of the air chisel in body work and the air wrench in changing tires. These noise levels in many cases approach 115 dBA. Because of poor ventilation, there is a constant potential for carbon monoxide to reach dangerous levels, especially in the wintertime when doors are closed and ventilation systems are many times turned off because of lack of heated, make up air. Also, noise and dust generated, during the grinding of lead and plastic filler on car bodies, is generally not properly protected against. Because of the large number of auto repair shops and service stations, control of these problems will be difficult. There are approximately 1,380 of these establishments employing 8,200 people.

B. Wood Products. The predominant problem in occupational health in the woods products industry is excessive noise. This is the greatest problem with the sawyers, heavy equipment operations and also most areas around a sawmill. Large numbers of people in this industry are exposed to noise levels above 90 dBA and many are exposed to 100 dBA or more. It appears that a great deal of work can be done in abating noise in these areas, such as enclosures, isolating the operators, alloys for preventing vibrating noise, mufflers, etc. Carbon monoxide and nitrogen dioxide is a problem in some areas of the mills where heavy equipment is being operated. The saw filing rooms are potential areas of fumes containing toxic materials such as cadmium in silver soldering work. Maintenance shops in these areas need to be observed for proper ventilation to CO, NO2, Hydrocarbons, welding fumes, etc. Wood dust in many areas of the mill is excessive. A potential CO problem area is around the sawyer during felling and bucking operations. This is more significent in the winter when snow is scooped out from around a tree and the sawyer is working in a depression. There are approximately 317 operations with 7,700 workers in the wood products industry.

C. Non Ferrous. Approximately 9 industries with 5,000 employees. Workers in this industry are exposed to a wide variety of fumes, dusts, gases, mists, vapors, and excessive noise. Some of the gases are extremely toxic, such as hydrogen sulfide in copper precipitation, and arsine gas which is generated in zinc and copper refining operations. Dusts and fumes contain a variety of toxic materials, such as lead, cadmium, arsenic, manganese, and others. Carbon monoxide is a potential problem in repair shops and in furnace areas. Nitrogen dioxide and ozone also present problems in some cases. Sulfur dioxide is prevalent in lead and zinc smelting operations. Excessive noise levels are experienced by hundreds of workers in this industry, especially around furnace areas.. Because of the potential exposure by hundreds of employees in this industry to a wide variety of occupational health hazards, a number 1 inspection priority is assigned to it.

D. Oil Refineries. Eleven industries and approximately 700 employees. There are broad exposures to a variety of hydrocarbons including hydrogen sulfide due mainly to the heating of crude oil with the resulting chemical processes involved. Noise levels are extremely high due to high pressure gas burners, compressor operations, steam reducing valves, etc. Odors are a constant nuisance due to hydrogen sulfide or similar type gases. Because HF is used in some operations, the potential for this atmospheric contamination is fairly high.

E. Boilermakers and Iron Works Welding and Machine Shops. These areas have a variety of occupational health problems, ranging from noisy operations to fumes, dusts, paints, mists and vapors. Most welding operations involve mild steel, but there are a few operations requiring the use of special metals and fluxes. In a large number of instances, these areas are not properly ventilated and respirators are not being utilized.

Air operated machines for cutting are quite noisy and in some cases, the background noise level in an iron works operations was found to be between 90 and 95 dBA. As in other industries, spray painting is often done in the same general area and is not separated or is poorly separated by curtains. Ventilation is not adequate in most cases where curtains are hung. Generally, only paper masks are worn. Organic type respirators are sometimes available but are not often used as many spray operators are not aware of the toxic nature of the hydrocarbons that are given off.

The occupational health problem in foundries needs to be looked at more closely; dust, noise, CO, and hot working conditions with lack of adequate ventilation are the main problems.

F. Construction. Approximately 210 units and 3,400 workers. Still needed to be surveyed include hot mix plant operations and some heavy construction. Maintenance shops for these construction activities are generally without adequate ventilation for engine exhausts, welding fumes, and paint fumes and vapors. Often times, much heavy equipment repair is done in the winter which creates more potential for exposure to CO, NO2, paint fumes, etc., because of closed doors and lack of heated makeup air.

Noise measurements taken on heavy equipment have shown excessively high values for most equipment used. Noise levels are generally in the range of 90 to 105 dBA for operators of this heavy equipment.

Dust is also a constant problem around heavy equipment. Crushing operations for road work is extremely noisy and dusty. It appears that dust could be controlled by more water application around crusher operations.

G. Implement Dealers. Approximately 340 establishments and 3,000 employees. These involve the sales and repair service of farm equipment and construction equipment. Snowcats, lawn mowers, chain saws, etc., are also usually sold and serviced as a sideline. Repair of this small equipment involves exposures to CO and excessive noise. A revved up chain saw usually approaches 115 dBA and emits large quantities of CO. Heavy equipment repair shops frequently are not ventilated to remove fumes and gases. Most of the larger equipment is powered by diesel engines which gives off both CO and NO2.

Solvents and welding operations are many times too near each other and solvent or degreasing tanks are rarely ventilated. Sometimes special welding rods are used which contains toxic materials but usually ventilation is not adequate. The paint rooms or booths, as in other industries, are poorly ventilated with improper respirators being worn.

These shops need to be inspected quite frequently as potential occupational health exposures are quite high.

H. Grain Elevators. The prime toxic agents encountered in health survey of grain elevators was seed treating; dusts and noise were next.

A mercury compound called "Panogen", "Panomatic", "Mistomatic" and "Ceresan" containing three percent and up of mercurial salts in the seed treating liquid. This liquid is dyed a bright magenta in color and easily recognizable.

The above seed treating compounds will expire in Montana in a year or so. The Environmental Protection Agency has rescinded the permit for interstate shipment of most mercury fungcides. One mercury compound still registered for use is Phenylomercuric acetate.

Two replacements for these mercury compounds will be "Hexachlorobenzene", "Pentachlorobenzene" in powder form, and may be even more toxic for close contact, but not as long lasting; organic mercury has a half life of seven years and in the human body is considered an accumulative poison. Several lakes and rivers in Japan, France, and Canada have been closed to fishing because of mercury poisoning.

Disposal of empty barrels needs stricter control. Most small towns in wheat producing areas have these containers for family trash collectors. There is no efficient way of cleaning these containers.

Elevators seem to be a marginal profit business and reflect this in equipment and hired help.

In most elevators surveyed, seed treating operators were observed with dye on hands, arms, face and clothes. In many instances, stories were told of mercury-compound-related accidents, from spilling compound on feet causing blisters, temporary blindness, vertigo, and unconsciousness to farm children eating treated wheat.

Dusts and noise are encountered mostly in cleaning up and grinding, mixing and bagging in combination elevator-animal feed sales operations.

3M paper particle masks are used in only some operations.

There are 329 licensed elevators involving approximately 1,100 workers in Montana.

I. Car Washers. Car wash businesses are mostly automatic, run in conjunction with gasoline sales.

Detergents are used in the water and present no particular health hazard other than skin sensitizing, but contact with detergent is minimal.

Where cars are air dried, noise has been measured from 99 to 103 dBA.

There are generally 2 men that are exposed to this noise as they wipe water drops off cars with towels.

Hearing protections are worn by some workers.

J. Newspaper and Print Shops. Approximately 108 establishments with 1,725 employees. There are three major occupational health hazards from printing or newspaper publishing processes. These are noise, solvent vapors, and lead fumes. There are a variety of solvents used for cleaning and printing, some of them chlorinated hydrocarbons. Often times ventilation is poor or practically nonexistent. The lead melting operation is not generally done too often but is sometimes not ventilated with the resulting exposures to lead fumes.

Noise levels are high during the printing operations.

Several more surveys need to be made in this area to more clearly define the extent of these industrial hygiene problems.

K. Tire Recapping. There are approximately 14 establishments with 79 employees in the state.

These operations involve visual tire checking, buffing, cement application, new rubber rolled on with heat and pressure applied to form tread design and band tread to tire.

Dust, vapors, noise, ventilation and lighting are items encountered.

Rubber dust in tire buffing is usually exhausted into a container, with some smoke emitted if buffing wheel is dull and in some instances, noisy, depending on type of machine used. Noise has been measured up to 102 dBA.

Cement is sprayed or brushed on, releasing vapors, with few shops having vented spray booths.

White gas is used to thin black tire paint in some operations.

Heat is encountered in mold area and ventilation is generally poor.

Noise is a problem with air impact wrenches in tire mounting, and is due mainly to air exhaust with readings of 101-108 dBA with only a 2 to 3 dBA rise when wrench is applied to wheel nut.

In shops doing wheel alignment, an air chisel is generally used to cut ball joint rivets and noise readings were measured from 113 to 115 dBA.

Lighting is generally poor.

L. Dry Cleaners. Approximately 108 establishments with 1,725 workers. The main potential industrial hygiene problem here is vapors from chlorinated hydrocarbons. These vapors are quite toxic and should be controlled if ventilation is adequate and dry cleaning equipment is kept in good condition. Vapors in these areas quite often permeate the entire building. These areas need to be looked at quite frequently to ensure that dry cleaning solution vapors are kept to a minimum.

M. Warehousing. Freight warehouses are quite numerous and the problem concerning industrial hygiene could be carbon monoxide from gas, caused by powered forklifts operated inside of warehouses and inside of railroad cars and trucks. This should be investigated from time to time. Warehouse workers often are exposed to non-heated areas and this could be remedied in many cases. Most forklifts are being converted to the use of propane fuel and this reduces the amount of carbon monoxide produced.

N. Plumbing and Sheet Metal. The health hazards in plumbing operations are fumes from acid flux when soldering and vapors from cement for plastic pipe bonding, usually done in confined spaces and with poor ventilation.

Noise in sheet metal dust work reaches high levels on some bending and grinding machines. There are approximately 159 establishments with 112 people involved in Montana.

P. Cement Ready Mix. Noise and dust are primary health hazards in crushing, screening and stock piling of aggregate. Dust from less automated plants in loading mixer trucks with cement and aggregate.

Auxiliary gasoline engine exhaust on some mixer trucks, used to turn mixers, are poorly muffled causing high noise and possible carbon monoxide (CO) levels.

There are approximately 54 plants and 375 workers in Montana.

13.7 Employee Analysis of Montana Employers.

The following chart is attached to indicate the large number of small employers in the state of Montana. It is also worthy to note that agriculture, as a whole is not included in this report. Some research has indicated approximately 15,000 farmers employ well over 7,000 employees.

EMPLOYEE ANALYSIS OF MONTANA EMPLOYERS

Division	Total No. Employers	Employees			
		Employers with 25 or fewer		Employers with more than 25	
		Number	% of Total	Number	% of Total
Agriculture, Forestry, and Fisheries	160	152	95.00%	8	5.00%
Mining	409	380	92.91	29	7.09
Contract Construction	2017	1882	93.31	135	6.69
Manufacturing	990	829	83.74	161	16.26
Transportation, Communication, electric, gas, and sanitary services	896	815	90.96	81	9.04
Wholesale and Retail Trade	7127	6780	95.13	347	4.87
Finance, Insurance, and Real Estate	1213	1153	95.05	60	4.95
Services	4412	4276	96.92	136	3.08
Government	OMIT				
Nonclassifiable Establishments	OMIT				
TOTAL	17,224	16,267	94.44%	957	5.56%

Source of Information: Employment Security Division's 202 listing for third quarter, 1971 (July, August and September - average employment)

Totals were hand tabulated from the 202 listing and compared with the ESC FL 295 Supplement for accuracy.

Note that the term "Employer" used in this report is that of the Employment Security Division's and is not consistant with the definition of "establishment" as defined by the Occupational Safety and Health Act. (For example, an employer on this analysis could represent several establishments in a county or state wide)

PART XIV - REVIEW COMMISSION

14.0 MOSHA, upon legislative approval, creates an Occupational Safety and Health Review Commission. Rules of procedures for the Occupational Safety and Health Review Commission are, at this time, in the developmental stage.

APPENDICIES

I Governor's Letter of Intent

II 41-1713 - Workmen's Compensation Division's (Board's) Powers

III Executive Reorganization Act, 1971

IV Organizational Chart

V 41-1727 - Code Making Power

VI 41-1718 - Red Tag

VII 41-1720 - Closure Order

VIII 41-1730 - Misdemeanor

IX Montana Map

X Montana Targets

XI Major and Minor Category Assignments

XII Inspection Form

XIII Citation Form

XIV Compliance Worksheet

6/28/72

State of Montana
Office of The Governor
Helena 59601

FORREST H. ANDERSON
GOVERNOR

February 14, 1972

Thomas C. Brown, Director
Office of State Programs
Occupational Safety and Health Admin.
U. S. Department of Labor
14th and Constitution Ave., N.W.
Washington, D. C. 20210

Dear Mr. Brown:

This letter is to inform you that I have redesignated the Montana Workmen's Compensation Division (formerly known as the Montana Industrial Accident Board) as the single state agency to act in behalf of Montana under Sections 18(b), 23(a), and 23(c) of the Occupational Safety and Health Act of 1970.

Mr. J. J. Carden, who served as chairman of the Industrial Accident Board since 1969, will serve as administrator of the Workmen's Compensation Division.

This action is a result of the Montana Executive Reorganization Act of 1971. The Workmen's Compensation Division was activated December 13, 1971.

Please feel free to contact me if you have any questions relating to this change.

Sincerely,

Forrest H. Anderson

Forrest H. Anderson
Governor

cc: George C. Guenther
Howard J. Schulte

APPENDIX I

Excerpt from the Montana Safety Act R.C.M. 1947, Chapter 17

41-1713. Board's powers—duty to establish department of safety under a safety director—rule-making power—subpoena and other powers. In the administration of this act the board:

(1) Is vested with full power and jurisdiction over, and shall have such supervision of, every employment and place of employment in this state as may be necessary to enforce and administer all laws and all lawful orders requiring such employment and places of employment to be safe and requiring the protection of the life and safety of every employee in such employment or place of employment.

(2) Shall establish a department of safety under the supervision of a safety director, to be appointed by the board, to carry out the provisions of this act. The safety director shall be a person with at least two (2) years' experience or training in the field of industrial safety.

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
WORKMEN'S COMPENSATION DIVISION

815 Front Street
Helena, Montana 59601

FORREST H. ANDERSON
GOVERNOR

J. J. CARDEN
ADMINISTRATOR

December 27, 1971

Gentlemen:

As authorized by the Executive Reorganization Act of 1971, Governor Anderson activated the new Department of Labor and Industry on December 13, 1971. This action abolished the Industrial Accident Board and established the Workmen's Compensation Division under the Department of Labor and Industry.

Coincident with the establishment of the Workmen's Compensation Division, the Governor appointed Mr. James J. Carden as administrator of this division. The quasi-judicial functions previously exercised by the Industrial Accident Board are now vested in the administrator.

As a result of this major reorganization, there has been a realignment of personnel and functions within this division. We believe this realignment will provide efficiencies in the administration of the Workmen's Compensation Act. To familiarize you who work in the field of Workmen's Compensation with our new profile, we are enclosing an organizational chart and a roster of key personnel. We trust you will find these items useful when calling upon the Workmen's Compensation Division for assistance.

Very truly yours,

WORKMEN'S COMPENSATION DIVISION

J. J. Carden

J.J. Carden
Administrator

JJC/db
Enclosures (2)

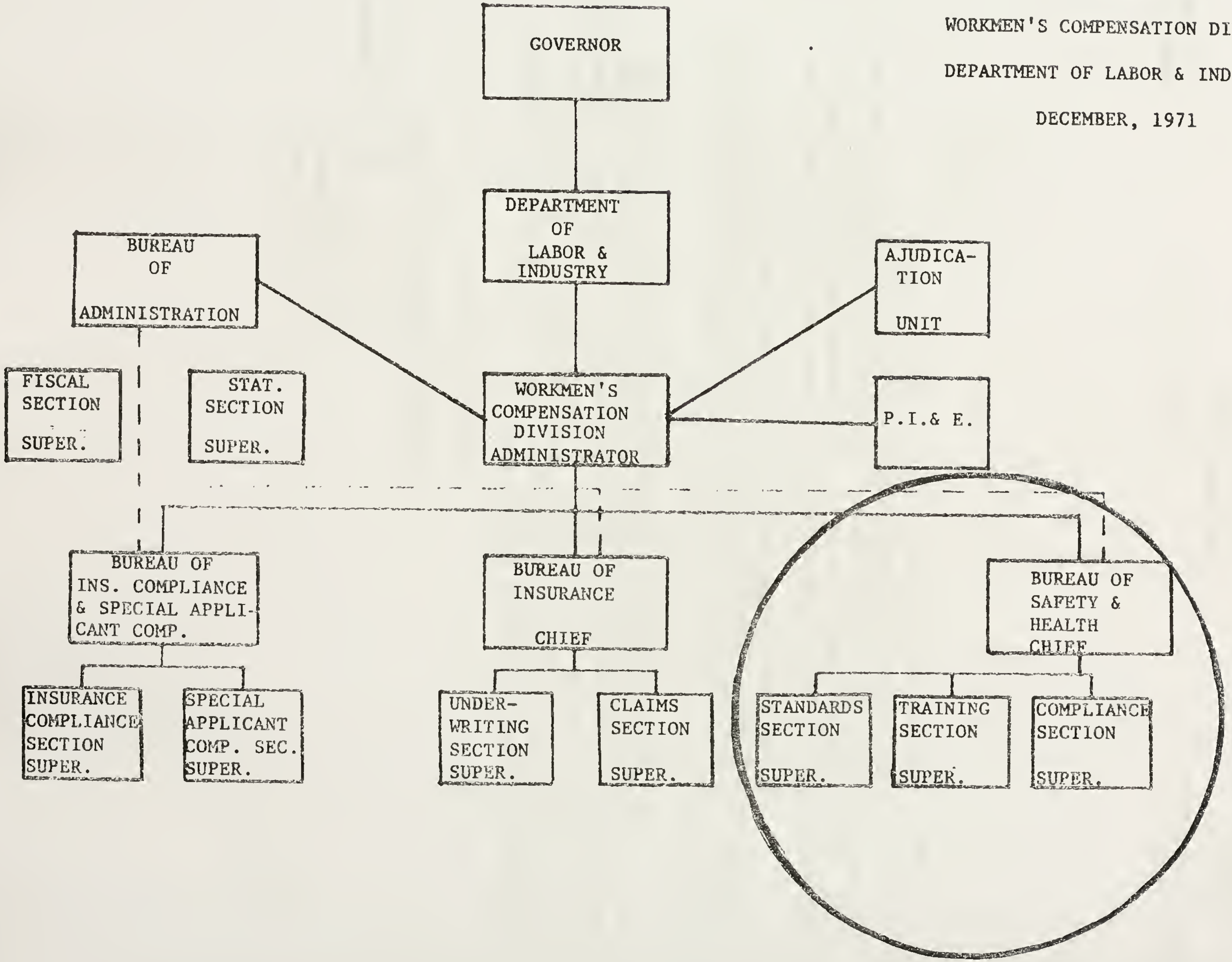
APPENDIX III

ORGANIZATIONAL CHART

WORKMEN'S COMPENSATION DIVISION

DEPARTMENT OF LABOR & INDUSTRY

DECEMBER, 1971


GOVERNOR
DEPARTMENT OF LABOR & INDUSTRY
BUREAU OF ADMINISTRATION
AJUDICA-TION UNIT
FISCAL SECTION SUPER.
STAT. SECTION SUPER.
WORKMEN'S COMPENSATION DIVISION ADMINISTRATOR
P.I.& E.
BUREAU OF INS. COMPLIANCE & SPECIAL APPLI-CANT COMP.
BUREAU OF INSURANCE CHIEF
BUREAU OF SAFETY & HEALTH CHIEF
INSURANCE COMPLIANCE SECTION SUPER.
SPECIAL APPLICANT COMP. SEC. SUPER.
UNDER-WRITING SECTION SUPER.
CLAIMS SECTION SUPER.
STANDARDS SECTION SUPER.
TRAINING SECTION SUPER.
COMPLIANCE SECTION SUPER.

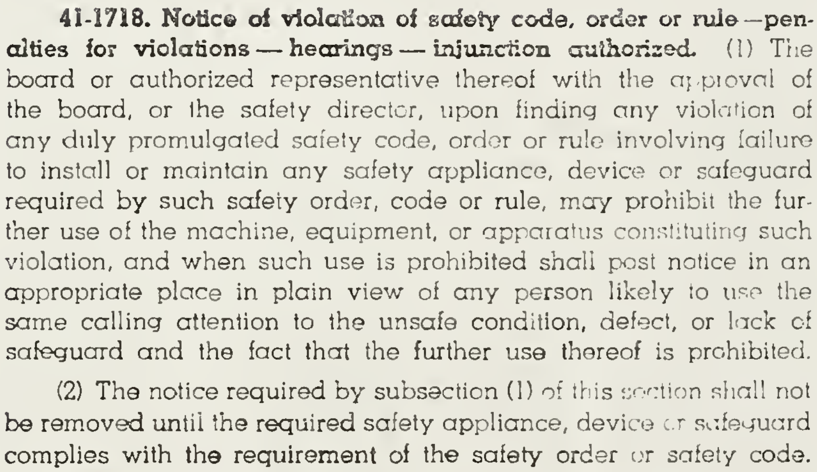
APPENDIX IV

Excerpt from the Montana Safety Act R.C.M. 1947, Chapter 17

41-1727. Code-making power. (1) In addition to such other powers and duties as may be conferred upon it by law, the board shall have the power to promulgate, amend, repeal and enforce rules for the prevention of accidents to be known as "safety codes" in every employment and place of employment, including the repair and maintenance of such places of employment, to render them safe. In the performance of its duties the board may appoint advisory committees to deal with specified industries composed of equal numbers of employers and employees; and others to suggest safety codes or amendments thereto. All such safety codes and rules shall, when adopted, be not inconsistent with the then existing widely accepted codes of such engineering bodies as the American Society of Mechanical Engineers, the American Standards Association, the American Society of Safety Engineers, the United States of America Standards Institute, the National Fire Protection Association, and, in addition, agencies of the federal government with responsibilities for administering worker safety programs, and other accepted codes. Any amendments made to such codes by the board shall be such that when amended such code shall be consistent with the widely accepted safety codes as then existing. All codes and all amendments thereto and repeals thereof shall take effect thirty (30) days after certified copies thereof shall be filed in the office of the secretary of state.

(2) Every code adopted and every amendment or repeal thereof shall be published in such manner as the board may determine. A printed list of all titles of all codes including amendments thereof issued and adopted by the board under the provisions of this act, together with the dates of adoption thereof, shall be published from time to time.

Excerpt from the Montana Safety Act R.C.M. 1947, Chapter 17



41-1718. Notice of violation of safety code, order or rule—penalties for violations—hearings—injunction authorized. (1) The board or authorized representative thereof with the approval of the board, or the safety director, upon finding any violation of any duly promulgated safety code, order or rule involving failure to install or maintain any safety appliance, device or safeguard required by such safety order, code or rule, may prohibit the further use of the machine, equipment, or apparatus constituting such violation, and when such use is prohibited shall post notice in an appropriate place in plain view of any person likely to use the same calling attention to the unsafe condition, defect, or lack of safeguard and the fact that the further use thereof is prohibited.

(2) The notice required by subsection (1) of this section shall not be removed until the required safety appliance, device or safeguard complies with the requirement of the safety order or safety code.

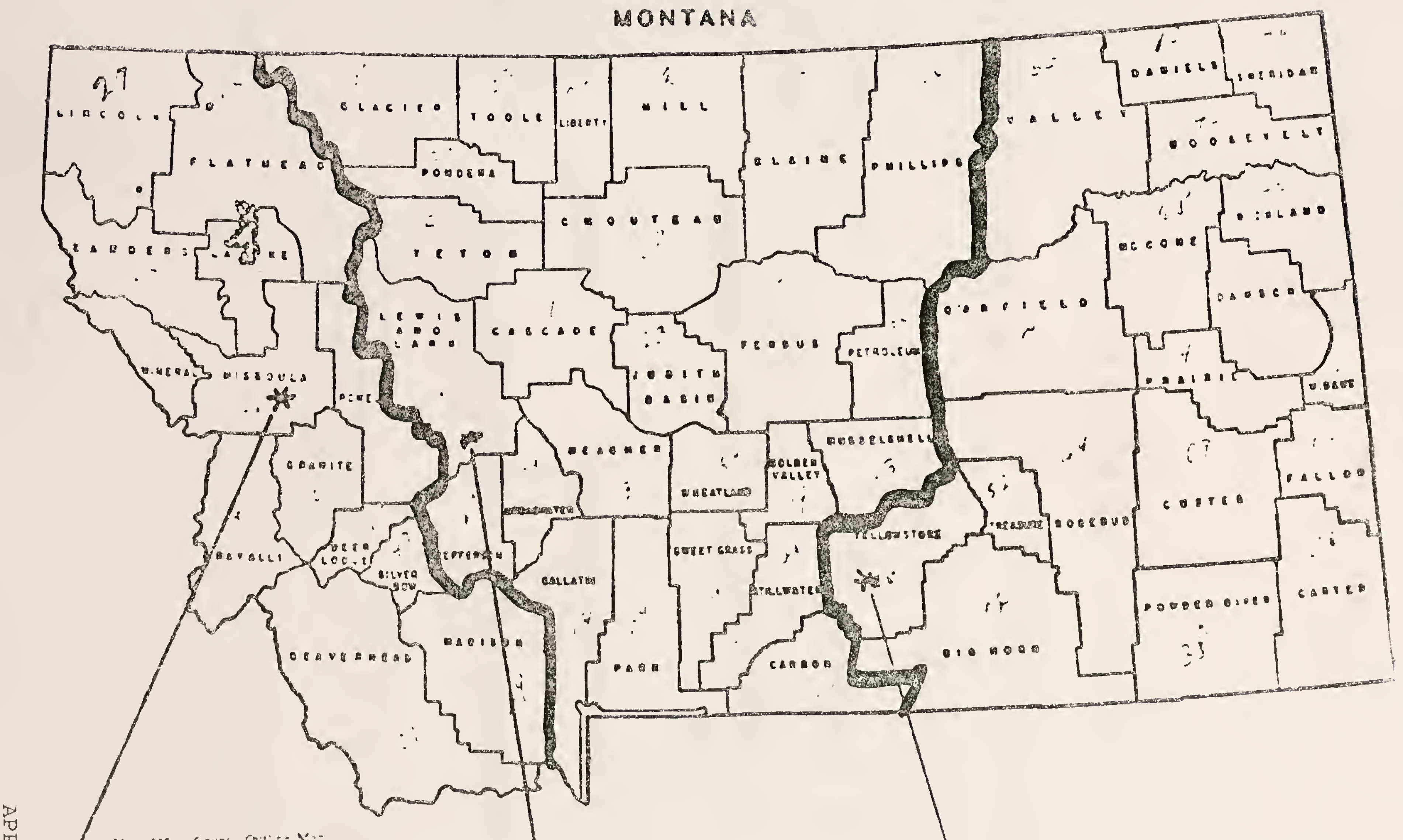
Excerpt from the Montana Safety Act R.C.M. 1947, Chapter 17

41-1720. Order of closure or for cessation of work where place of employment an immediate menace to life or safety. The board or authorized representative thereof, with the approval of the board, or the safety director, may order any place of employment closed, or the work therein to cease if it is found that the place of employment is in such an unsafe condition as to constitute an immediate menace to the life or safety of the workmen employed therein. Any such order of closure or for cessation of work shall be expressly limited to only that portion of the plant, installation or facility as is directly and immediately affected by the unsafe condition constituting an immediate menace to the life and safety of the workmen employed therein. Upon issuance of any such order, the board or safety director shall fix a place and time, not later than twenty-four (24) hours thereafter, for a hearing to be held before the board. Not more than twenty-four (24) hours after the commencement of the hearing, and without adjournment thereof, the board shall affirm, modify, or set aside the order. Nothing in this section shall empower the safety director to determine that any employment or place of employment is in an unsafe condition on the basis of the number or qualifications of employees operating such employment or place of employment unless a specific rule adopted after public hearing is violated. Provided that for those employments or places of employment for which no code has been adopted and where it is found by the safety director that such place of employment is in such an unsafe condition as to constitute an immediate menace to the life or safety of the workmen there employed, the safety director may order that portion of the plant, installation or facility as is directly and immediately affected by such unsafe condition closed for a period not to exceed four (4) hours unless such period be extended by order of the board.

Excerpt from the Montana Safety Act R.C.M. 1947, Chapter 17

41-1730. Violation of safety provision—misdemeanor. In addition to all other penalties herein provided: Every employer, workman or other person, who, either individually or acting as an officer, agent, or employee of a corporation or other person, violates any safety provision of this act, or who, directly or indirectly, knowingly induces another to do so is guilty of a misdemeanor.

APPENDIX VIII


MONTANA
LINCOLN
FLATHEAD
GLACIER
TOOLE
LIBERTY
HILL
BLAINE
PHILLIPS
VALLEY
DANIELS
SHERIDAN
ROOSEVELT
SANDERS
LAKE
PONDERA
TETON
CHOUTEAU
RICHLAND
McCONE
LEWIS AND CLARK
CASCADE
JUDITH BASIN
FERGUS
PETROLEUM
GARFIELD
DAWSON
PRAIRIE
WIBAUX
MINERAL
MISSOULA
POWELL
GRANITE
MEAGHER
WHEATLAND
GOLDEN VALLEY
MUSSELSHELL
ROSEBUD
CUSTER
FALLON
RAVALLI
DEER LODGE
SILVER BOW
JEFFERSON
BROADWATER
GALLATIN
SWEET GRASS
STILLWATER
YELLOWSTONE
TREASURE
POWDER RIVER
CARTER
BEAVERHEAD
MADISON
PARK
CARBON
BIG HORN
No. — County Outline Map
STATE PUBLISHING COMPANY
Helena

Area I
* Missoula Area Office
12 Counties

Area II
* Helena Area Office
25 counties

Area III
* Billings Area Office
18 Counties

APPENDIX IX

2/23/72

MONTANA

TARGET INDUSTRIES

(A) LUMBER AND WOOD PRODUCTS

(B) CONSTRUCTION

(C) PRIMARY SMELTING AND REFINING OF NONFERROUS METAL

(D) MOTOR FREIGHT TRANSPORTATION AND WAREHOUSING

(E) LOCAL GOVERNMENT, EXCEPT SCHOOLS

APPENDIX X

AREA I

INDUSTRIAL CATEGORIES

COMPLIANCE OFFICER	MAJOR	MINOR	SPECIAL
JACK MIEHLE	T 242 SAWMILLS 243 PLYWOOD 249 MISC. WOOD PROD. 261 PULP MILLS	521 LUMBER DEALERS T 241 LOGGING	504 WHSL GROCERI 505 GRAIN ELEVAT
JIM WADDELL	T 176 ROOFING & SHEET METAL 151 THRU 179 ALL CONST. 371 THRU 374 MANF. TRANS. EQ. T 379 MANF. TRAILERS	421, 422, 423 551 THRU 559 751 THRU 753	271 THRU 279
JOHN SWIGERT	T 241 LOGGING T 201 MEAT PACKING	208 BEVERAGE INDUSTRY	

AREA II

COMPLIANCE OFFICER	MAJOR	MINOR	SPECIAL
AUSTIN LEISTIKO	T 176 ROOF & SHEET METAL 151 THRU 179 ALL CONST. T 241 LOGGING T 242 SAWMILLS	131 & 138 PETROLEUM 291 PET REFINERIES 937 STATE SHOPS 947 CITY & CTY SHOPS	423 TRANSPORTATION

AREA III

INDUSTRIAL CATEGORIES

COMPLIANCE OFFICERS	MAJOR	MINOR	SPECIAL
RON BYRD	T 176 ROOF & SHEET METAL 151 THRU 179 ALL CONST T 379 MANF. TRAILERS T 241 LOGGING	131, 138, 291 PETROLEUM 937 STATE SHOPS 947 CITY, CTY SHOPS	
ROY MOODY	T 201 MEAT PACKING 501 THRU 509 WHOLSALE TRADE 551 THRU 559 AUTO DEALERS 751 THRU 754 AUTO REPAIR	423 TRUCK TERMINALS 344 METAL PROD.	208 BEVERAGE 271 THRU 279 PRIN. 011 THRU 019 AGRI.
FRANK OSET	121 & 122 COAL MINING 101 THRU 119 METAL MINES	131, 138, 291 PETROLEUM	

T indicates Federal Target industries.

APPENDIX XI

Workmen's Compensation Division

BUREAU OF SAFETY AND HEALTH

815 Front Street, Helena, Montana 59601

INSPECTION

Safety or Health

1 FY:	2 Report No.
3 Firm No.	4 Plan No. 5 Ind. Code

6 Corp.	7 Partnership	8 Indiv.	9 Company	10 Inspection Date	11 Social Security No.

12 Name Employer or Firm P.O. Box or Street City State

13 Address of Work Place - Street, Avenue or proximity to nearest town

14 City 15 State 16 County

17 Type of Business		18 Number Employed	19 All Shifts	20 Largest Shift
21 Government Contract? ( ) Yes	22 Contract No.: ( ) No	23 Male		
24 Is work on employer's premises? ( ) Yes ( ) No		25 Female		
26 Type: Initial ☐ Follow-up ☐	27 Complaint: Yes ☐ No ☐	28 Total		

29 Management Officials Contacted	Title	30 Employee Insp. Representative(s)	Title
31 Management Insp. Repr.(s)		32 Other Employees Contacted	
33 Closing Conference Contacts			

34 Description of Work Site:

35 Description of processes (Raw materials, major processes, end products, construction, etc.

36 Is fire protection adequate ( ) Yes ( ) No

37 Did you observe an injury or health hazard not covered by a Standard? ( ) Yes ( ) No

38 Was advance notice of inspection given? ( ) Yes ( ) No To whom__________ When?________

39 Was accident reporting and recordkeeping discussed with employer? ( ) Yes ( ) No

40 Did employer have forms available for reporting accidents? ( ) Yes ( ) No

41 Has employer failed to meet the posting requirements? ( ) Yes ( ) No

Are required First Aid supplies available to employees? ( ) Yes ( ) No

43 Travel Time	44 Inspection Time	45 Total Time	46 Inspector sign here 47 Date

Form MTSH-1 Rev. 1/3/72

APPENDIX XII

WORKMEN'S COMPENSATION DIVISION
BUREAU OF SAFETY
815 Front Street
Helena, Montana 59601

No. ____________________

Date ____________________

CITATION - Advisory Only

- SAFETY OR HEALTH -

Firm ____________________ Plan No. ______ Firm No. ____________________

Address ____________________ City ____________________ State ____________________

Department or Branch: ____________________ Industry: ____________________ Major Ind. No. ____________________

Location of Operation: ____________________ County: ____________________ Employees Premises: ____________________

THIS CITATION IS ISSUED FOR THE PURPOSE OF ADVISING OF CERTAIN HAZARDOUS SAFETY AND HEALTH CONDITIONS OR UNSAFE METHODS IN YOUR OPERATIONS AS DETERMINED NOT TO BE IN COMPLIANCE WITH FEDERAL, NATIONAL OR PROFESSIONAL SAFETY STANDARDS ACCEPTABLE TO THE INDUSTRY.

A Safety inspection was made of your premises or operations under the authority of Section 41-1725 of the Montana Safety Act. The following items were found to be not in compliance with Federal Safety and Health Standards, and the Workmen's Compensation Division Policy Order dated December 6, 1971.

Item Number	Standard, Rule or Regulation	Description of non-Compliance	Date on which alledged Violation must be corrected

DRAFT

Inspector ____________________

ADVC-12/1/71

APPENDIX XIII

Workmen's Compensation Division

BUREAU OF SAFETY AND HEALTH

815 Front Street, Helena, Montana 59601

COMPLIANCE WORKSHEET

^{1}FY:	^{2}Report No,
^{3}Firm No.	^{4}Plan No. ^{5}Ind. No.

EMPLOYER ______________________________

ADDRESS ______________________________

____

^{6}DATE: ______________

Page ________ of ________

^{7}Location	^{8}Apparent Violation(s) Noted	^{9}Comments

MTSH-1A

APPENDIX XIV

REPEALING CLAUSE

Section 30, Repealer. Sections 41-1708 through 41-1733, R.C.M. 1947, (and possibly others) are repealed.

> COMMENT: Standard repealing clause suggested by our Bill Drafting Manual, repealing the Old Safety Act and possibly parts of the Occupational Health Act and other miscellaneous sections (92-116, 92-1105.1).

EFFECTIVE DATE

Section 31. Effective Date. Sections 19, 27 and 28 of this act are effective upon its passage and approval; all other sections are effective on August 1, 1973.

> COMMENT: This allows crucial administrative sections concerning application to the Merit System, appropriations, and federal aid to take effect the day the governor signs the bill. All other sections would be somewhat delayed beyond the usual July 1 effective date, until September 1, to allow additional start-up time and time for employers to prepare for its advent.

MOSHA LEGISLATION

DRAFT

of the

PROPOSED

"MONTANA OCCUPATIONAL SAFETY AND HEALTH ACT OF 1973".

Submitted by

Roger Hazell
Attorney at Law
403 Power Block -- Box 1041
Helena, Montana 59601
(406) 442-4338

DRAFTING HISTORY

First Draft:	March 3, 1972
Second Draft:	March 22, 1972 Pages have /2 (3/22/72 for 2nd draft and date.
Third Draft:	March 31, 1972 Pages have /3 (3/31/72) for 3rd draft and date.
Fourth Draft:	April 28, 1972 Pages have /4 (4/28/72) for 4th draft and date.
Fifth Draft:	June 8, 1972 (Pages have /5 (6/8/72) for 5th draft and date.
Sixth Draft:	June 28, 1972 Pages have /6 (6/28/72) for 6th draft and date.

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Penalties 43

Appropriations 47

Federal Aid 48

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TIME TABLE

There are certain deadlines which have rather arbitrarily been imposed, some by myself; others, are created by law. It follows that on or about the dates indicated, the following should take place.

March 3	First draft distributed to interested parties for consideration and critical comment, including state and federal agency representatives, employers and employees representatives.
March 16, 17	I will coordinate with the Regional Solicitor of OSHA in Denver, Mr. Henry C. Mahlman, Esq., to make the first contact and attempt to get the first federal critique of our proposed legislation.
March 31	First drafts will be presented to the Governor's Workmen's Compensation Advisory Council, an advisory body made up of both employer and employee representatives, for their analysis and comments.
During April	During April, hopefully, feedback from all the sources contacted will enable meaningful substantive redrafting to take place.
Early May	Early in May a draft that should be getting very close to, or at, the substantive acceptance level to both federal equivalency requirements as well as the hurdle of Montana employers and employees representatives approval.
May 3	I believe that an informal state plan together with the proposed enabling legislation will be submitted to the Denver Federal regional office of OSHA for tentative approval.
June 2	The formal draft of state plan together with the proposed legislation will be forwarded to Denver office over Governor Anderson's signature for approval and smooth transfer into 50/50 monies on July 1, 1972.
September 14	This is the date that the state plan must be submitted by, as it is nine (9) months from the date, December 14, 1971, of Governor Anderson's letter of intent to submit a state plan.
November 10	Submission of final draft to governor's executive reorganization attorneys for final approval of consistency with the reorganization act.

December 1	Submission to Legislation Council's Bill Drafting Service for final style approval.
December	Bipartisan employer and employee support will be sought out to sponsor the bill.
January 1	The bill should be presented to the 43rd Leislative Assembly as early as possible in the session, preferably the first day, January 1, 1973.

This is just a broad time table outline, with relatively flexible dates, but it does afford a framework for action, for those concerned, to be taken in order to get the best possible legislative result.

BILL DRAFTING AID

Later drafts will have a side-by-side section number comparison of the proposed draft, OSHA, the current safety act, the current health act, and their justification, source, and any federal requirement they satisfy. For the present, much of this information is contained in the draftsman's comments, following each section (which will not become part of the act, but which are placed there now purely for informational guidance).

FINAL FORMAT AND STYLE

The final format and style will constantly be polished as the redrafting process goes forward. For instance, the current federal type of long many-paged sections will eventually give way to chapters within a new title and numerous smaller sections due to our Montana amendatory process of having to reproduce all of a section that is to be amended in order to show the legislators the whole effect of the proposed amendment. Also, certain rules in the Legislative Council's Bill Drafting Manual (1962) and their more recent proposed Clerical Manual (1971) (for preparation of bills for introduction) will constantly be reviewed for proper style of introduction.

In short, there will be nonsubstantive changes going on all along the process for this first draft until the final product is dropped into the hopper, hopefully on January 1, 1973.

BASIC PLAN OUTLINE

The basic plan used in this draft has been as follows:

(1) The Williams-Steiger "Occupational Safety and Health Act of 1970" (P.L. 91-596, 84 Stat. 1590 (Dec. 29, 1970, hereinafter OSHA, has been redrafted while comparing our own:

(a) "Montana Safety Act" of 1969, and the

(b) "Occupational Health Act of Montana" of 1971, and saving the best of our two acts while attempting to meet the federal requirement of submitting a state plan including draft legislation that will be "at least as effective" (OSHA sec. 18(c)(2)) as the federal act.

(2) Also the draft has to be consistent with two pieces of new legislation enacted at the 43rd Legislative Assembly, namely:

(a) The "Executive Reorganization Act of 1971", and

(b) The "Montana Administrative Procedure Act of 1971",

both of which have far reaching implications for all subsequent legislation.

This then has been the basic plan for the first rough draft.

THE BASIC BILL OUTLINE

The basic outline of the "Montana Occupational Safety and Health Act of 1973" (MOSHA) is as follows:

I. Bill No.
II. Introduced by
III. Key to amended and/or repealed sections
IV. Title
V. Preamble
VI. Enacting clause
VII. Body
    1. Short Title
    2. Declaration of policy and purpose
    3. Definitions
    4. Basic provisions
    5. Miscellaneous provisions
    6. Penalties
    7. Saving clause
    8. Appropriations section
    9. Federal Aid
    10. Severability clause
    11. Repealing section
    12. Effective date

DRAFT

"MONTANA OCCUPATIONAL SAFETY AND HEALTH ACT OF 1973"

______________BILL NO. ________

INTRODUCED BY __________________________

41-1708, through 41-1733, 92-116, 92-1105.1 (and some in 69-42)

A BILL FOR AN ACT ENTITLED: "AN ACT TO

ESTABLISH ________________________________

; AMENDING SECTIONS ____________

; REPEALING SECTIONS ___________

; AND PROVIDING FOR AN EFFECTIVE

DATE."

PREAMBLE

Whereas, the Congress has, in its passage of the Williams-Steiger "Occupational Safety and Health Act of 1970" in December 29, 1970 (P.L. 91-596, 84 Stat. 1590), given the states an opportunity to assume the responsibility for setting and enforcing occupational safety and health standards within their borders; and

Whereas, the people of Montana, both employers and employees alike, would be benefited by such state assumption of responsibility for the establishment, enforcement and general supervision of occupational safety and health standards in Montana; and

Whereas, this is an act to assure all workers in the state that their right to a safe and healthful workplace and their right to participate in the creation and maintenance of such workplaces is enabled by means of a comprehensive and effective program for occupational safety and health as provided in this act and supersedes the current "Montana Safety Act" and portions of the"Occupational Health Act of Montana"; and;

Whereas, this policy is to be implemented by defining the general duties of employers and employees to prevent conditions and conduct detrimental to safety and health arising out of and in the course of employment and by assigning the responsibility and authority for the implementation of this act to the workmen's compensation division of the department of labor and industry; now, therefore,

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

> COMMENT: This preamble may appear in the session Laws, but probably will not be codified into the R.C.M.'s as the codifier and compiler see fit, but it should reflect the federal preamble and OSHA sec. 2 in a brief fashion.

TITLE

Section 1. Short Title. This act shall be known and may be cited as the "Montana Occupational Safety and Health Act of 1973".

> COMMENT: This simply gives the act its most logical title.

DECLARATION OF POLICY AND PURPOSE

Section 2. Declaration of policy and purposes. (1) It is hereby declared to be the public policy of this state and the purpose of this act to assure so far as possible every working man and woman in Montana safe and healthful working conditions and to preserve our human resources.

(2) To these ends it is the purpose of this act to provide for a coordinated state plan for implementation, establishment, and enforcement of occupational

safety and health standards at least as effective as the federal Williams-Steiger "Occupational Safety and Health Act of 1970" (P.L. 91-596, 84 Stat. 1590, December 29, 1970).

> COMMENT: This blends the purpose and policy under OSHA sec. 2 (b) and some language from section 69-4207, the "Occupational Health Act of Montana" (Ch. 316, Laws of 1971, codified as section 69-4206 through 69-4221, repealing sections 69-4201 through 69-4205).

DEFINITIONS

Section 3. Definitions. For purpose of this act (or as used in this act), unless context requires otherwise: (1) "Administrator" means the administrator of the workmen's compensation division of the department of labor and industry or his duly authorized representative.

(2) "Division" means the workmen's compensation division of the department of labor and industry.

(3) "Person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.

(4) "Employer" means a person who has one or more employees and includes any person acting directly or indirectly in the interest of, or as a representative of an employer.

(5) "Employee" includes any person suffered or permitted to work by an employer.

(6) "Industry" means a trade, business, industry, or branch thereof, or group of industries, in which individuals are employed.

(7) "Standard" means an occupational health and safety standard or group of standards which requires conditions, or the adoption or use of one or more practices, means, methods,

operations, or processes, reasonably necessary to provide safety and healthful employment and places of employment:

(8) "National consensus standard" means any occupational safety and health standards or modification thereof which: (1) has been adopted and promulgated by a nationally recognized standards-producing organization under procedures whereby it can be determined by the division that persons interested and affected by the scope or provisions of the standard have reached substantial agreement on its adoption; (2) was formulated in a manner which affords an opportunity for diverse views to be considered; and (3) has been designated as such a standard by the U. S. Secretary of Labor, after consultation with other appropriate federal agencies.

(9) "Workplace" means any place in or about which an employee is suffered or permitted to work.

(10) "Interested person" means an employee, or any person he designates as his representative, an employer, or any person he designates as his representative, or an authorized representative of the division or its administrator.

(11) "Hearing" and "Publication" means generally those terms as used in the "Montana Administrative Procedure Act" (Title 82, Chapter 42, R.C.M 1947) unless expressly removed by the intent of this act.

(12) "Amendment" means such modification or change in a code, standard, rule, or order as shall be intended to be of universal or general application.

(13) "Variance" means a special, limited modification or change in the code or standard which is applicable only to the particular establishment of the employer or person petitioning for such modification or change.

(14) "Imminent danger" means a danger exists which could reasonably be expected to cause illness, death or serious physical harm immediately, or before the imminence of such change can be eliminated through the enforcement procedures otherwise provided by this act.

(15) "Secretary" means the United States secretary of labor of the United States department of labor.

(16) "Council" means a Montana occupational safety and health advisory council, created for purely advisory functions.

(17) "Commission" means the Montana occupational safety and health review commission created for quasi-judicial functions.

BASIC PROVISIONS

VESTING OF POWER IN DIVISION

Section 4. Administration powers -- safety bureau - rule making power - other powers - jurisdiction. (1) The administration of this act shall be vested in the workmen's compensation division of the department of labor and industry and its administrator as described in section 82-1004 and the division:

(a) Is vested with full power and jurisdiction over, and shall have such supervision of, every workplace in this state as may be necessary to enforce and administer all laws and all lawful orders requiring the workplaces to be safe and requiring the protection of the life, safety, and health of every employee in each workplace.

(b) Shall establish a bureau of safety and health under the supervision of a bureau chief, to be selected by the administrator pursuant to the merit system procedures, to carry out the state plan and provisions of this act as the administrator may delegate. The bureau chief shall be a person with at least five (5) years' experience or training in the field of industrial safety and health.

(c) Shall make, establish, promulgate and enforce all necessary and reasonable rules and provisions for the purpose of carrying this act into effect. In reference to the investigation of all violations of this act, the division shall fix and set the time and place for all hearings which may be necessary or expedient for the purpose of carrying the provisions of this act into effect.

(d) May on its own motion or at the request of an interested person administer oaths, take depositions, and subpoena the attendance of witnesses and compel the production of papers, books, accounts, documents and testimony in any inquiry, investigation, hearing, or proceeding in any part of this state.

(2) This act shall apply to all workplaces within the state of Montana whether private, public, state, county, municipal or interstate and excepting where other Federal agencies have already pre-empted the state of Montana by prescribing and enforcing standards affecting occupational safety or health.

COMMENT: A redraft of 41-1713 with minor changes and establishin g jurisdiction over all work places regardless of employer, except Federal. Meets Federal requirements OSHA sec. 18(c(1) in which a state agency is designated and vested with power to administer the state plan.

GENERAL DUTIES

Section 5. General duties -- employer and employee. There are general affirmative duties created under this act as follows: (1) Each employer shall:

(a) furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees; and

(b) comply with occupational safety and health standards promulgated under this act.

(2) Each employee shall comply with occupational safety and health codes and standards and all orders, rules, and regulations issued under this act which are applicable to his own actions and conduct.

COMMENT: This includes and enlarges upon 41-1710, 1711, and 1712 and the language is directly from OSHA sec. 5.

Section 6. (1) Without regard to Title 82, Chapter 42, or to the other subsections of this section, the division shall, as soon as practicable, by rule issue as an occupational safety or health standard any national concensus standard, or any adopted federal standard, unless it determines that the issuance of such a standard would not result in improved safety or health for specifically designated employees. All codes, standards, rules, and amendments adopted under this subsection shall take effect thirty (30) days after certified copies thereof shall be filed in the office of the secretary of state. In the event of conflict among any such standards, the division shall issue the standard which assures the greatest protection of the safety or health of the affected employees.

(2) The division may by rule issue, modify, or revoke any occupational safety or health standard in the following manner:

(a) Whenever the division, upon the basis of information submitted to it in writing by an interested person, a representative of any organization of employers or employees, a nationally recognized standards-producing organization, or a state agency or political subdivision of the state, or on the basis of information developed by the division or otherwise available to it, determines that a rule should be promulgated in order to serve the objectives of this act, the division may request the recommendations of an advisory council if created and appointed under section 7. The division shall provide such an advisory council with any proposals of its own, together with all pertinent factual information developed or otherwise available, including the results of research, demonstrations, and experiments. The advisory council shall submit to the division its recommendations regarding the rule to be promulgated within ninety (90) days from the date of its appointment or within such longer or shorter period as may be prescribed by the division, but in no event for a period which is longer than two hundred and seventy (270) days.

(b) The division shall publish in the Montana Administrative Code (82-4206) a proposed rule issuing, modifying, or revoking an occupational safety or health standard and shall afford interested persons a period of thirty (30) days after publication to submit written data or comments. Where the advisory council is created and the division determines that a rule should be issued, it shall publish the proposed rule within thirty (30) days after the submission of the advisory council's recommendations or the expiration of the period prescribed by the division for such submission.

(c) On or before the last day of the period provided for the submission of written data or comments under subsection (b), any interested person may file with the division written objections to the proposed rule, stating the grounds therefor and requesting a public hearing on such objections. Within thirty (30) days after the last day for filing such objection, the division shall publish a notice specifying the occupational safety or health standard to which objections have been filed and a hearing requested, and specifying a time and place for such hearing.

(d) Within sixty (60) days after the expiration of the period provided for the submission of written data or comments under subsections (b), or within sixty (60) days after the completion of any hearing held under paragraph (c), the division shall promulgate a rule issuing, modifying, or revoking an occupational safety or health standard or make a determination that a rule should not be issued. Such a rule may contain a provision delaying its effective date for such period, not in excess of ninety (90) days as the division determines may be necessary to insure that affected employers and employees will be informed of the existance of the standard and of its terms and that employers affected are given an opportunity to familiarize themselves and their employees with the existence of the requirements of the standard.

(e) The division, in issuing standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard issued shall be expressed in terms of objective criteria and of the performance desired.

(f) (i) Any employer may apply to the division for a temporary order granting a variance from a standard or any provision thereof issued under this section. Such temporary order shall be granted only if the employer files an application which meets the requirements of clause (ii) and establishes that (A) he is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date, (B) he is taking all available steps to safeguard his employees against the hazards covered by the standard, and (C) he has an effective program for coming into compliance with the standard as quickly as practicable. Any temporary order issued under this paragraph shall prescribe the practices, means, methods, operations, and processes which the employer must adopt and use while the order is in effect and state in detail his program for coming into compliance with the standard. Such temporary order may be granted only after notice to employees and an opportunity for a hearing: provided, that the division may issue one (1) interim order to be effective until a decision is made on the basis of the hearing. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard, or one year, whichever is shorter except that such an order may be renewed not more than twice; 1. so long as the requirements of this subsection are met, and, 2. if an application for renewal is filed at least ninety (90) days prior to the expiration date of the order. No interim renewal of an order may remain in effect for longer than one hundred and eighty (180) days.

(ii) An application for a temporary order under this subsection (f) shall contain:

(A) a specification of the standard or portion thereof from which the employer seeks a variance,

(B) a representation by the employer, supported by representations from qualified persons having firsthand knowledge of the facts represented, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefor,

(C) a statement of the steps he has taken and will take, with specific dates, to protect employees against the hazard covered by the standard,

(D) a statement of when he expects to be able to comply with the standard and what steps he has taken and what steps he will take, with dates specified, to come into compliance with the standard, and

(E) a certification that he has informed his employees of the application by giving a copy thereof to their authorized representative, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted, and by other appropriate means.

A description of how employees have been informed shall be contained in the certification. The information to employees shall also inform them of their right to petition the division for a hearing.

(iii) The division is authorized to grant a variance from any standard or portion thereof whenever it determines that such variance is necessary to permit an employer to participate in a research and development project approved by the division to demonstrate or validate new and improved techniques to safeguard the health or safety of workers.

(g) Any standard issued under this subsection shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, such standard shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as may be necessary for the protection of employees. In addition, where appropriate, any such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure. In the event such medical examinations are in the nature of research, as determined by the division; such examinations may be furnished at the expense of the division. The results of such examinations or tests shall be furnished only to the division, and, at the request of the employee, to his physician. The division may, by rule, make appropriate modifications in the foregoing requirements relating to the use of labels or other forms of warning, monitoring or measuring, and medical examinations, as may be warranted by experience, information, or medical or technological developments acquired subsequent to the promulgation of the relevant standard.

(h) Whenever a rule issued by the division differs substantially from an existing national consensus standard, or adopted federal standard, the division shall, at the same time, publish in the Montana Administrative Register under section 82-4206 a statement of the reasons why the rule as adopted will better effectuate the purpose of this act than the national consensus standard.

(3) (a) The division shall provide for an emergency temporary standard to take immediate effect upon publication in the Montana Administrative Register if he determines that, 1. employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards, and 2. that such emergency standard is necessary to protect employees from such danger.

(b) Such standard shall be effective until superseded by a standard issued in accordance with the procedures prescribed in subsection (c) of this subsection.

(c) Upon publication of such standard in the Montana Administrative Register the division shall commence a proceeding in accordance with section 6 (2) of this act, and the standard as published shall also serve as a proposed rule for the proceeding. The division shall issue a standard under this paragraph no later than six (6) months after publication of the emergency standard as provided in subsection (b) of this subsection.

(4) Any affected employer may apply to the division for a rule or order for a variance from a standard issued under this section. Affected employees shall

be given notice of each such application and an opportunity to participate in a hearing. The division shall issue such rule or order if it determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and a workplace to his employees which are as safe and healthful as those which would prevail if he complied with the standard. The rule or order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which he must adopt and utilize to the extent they differ from the standard in question. Such a rule or order may be modified or revoked upon application by an employer, employees, or by the division on its own motion, in the manner prescribed for its issuance under this subsection at any time after six (6) months from its issuance.

(5) Whenever the division issues any code, standard, makes any rule, order, or grants any exemption or extension of time, or compromises, mitigates, or settles any penalty assessed under this act, he shall include a statement of the reasons for such action, which shall be published in the Montana Administrative Code.

(6) Any person who may be adversely affected by a standard issued under this section may at any time prior to the sixtieth (60th) day after such standard is issued file a petition challenging the validity of such standard with the district court wherein such person resides or has his principal place of business, for a judicial review of such standard. A

copy of the petition shall be forthwith transmitted by the clerk of court to the division. The filing of such petition shall not, unless otherwise ordered by the court, operate as a stay of the standard. The determinations of the division shall be conclusive if supported by substantial evidence in the record considered as a whole.

(7) In determining the priority for establishing standards under this section, the division shall give due regard to the urgency of the need for mandatory safety and health standards for particular industries, trades, crafts, occupations, businesses, workplaces or work environments.

> COMMENT: This is the real guts of the measure. It absorbs and enlarges on our own code-making power under 41-1727-28 and fulfills the federal requirements of OSHA section 18(c)(2), the heart of the state plan.
>
> This section will definitely be cannibalized into shorter and more easily manageable sections.

ADVISORY COUNCIL

Section 7. Advisory council on standards-setting functions.

(1) The administrator may, if he deems it advisable or convenient, create a Montana occupational safety and health advisory council to assist the division and the bureau of safety and health in its standard-setting functions under section 6 of this act.

(2) If the administrator creates the advisory council he shall create it consistent with section 82A-110 and

delegate to it such advisory functions as he, from time to time, may deem advisable.

(3) The administrator shall furnish to the council such clerical, secretarial, and other services as are deemed necessary to the conduct of business delegates to it. The executive secretary of any council(s) so created shall be the executive secretary of the division.

> COMMENT: A section to provide for the creation, consistent with Executive Reorganization, if the administrator deems it advisable, of an advisory council on standard-setting.

INSPECTIONS, INVESTIGATIONS, AND RECORDKEEPING

Section 8. (1) In order to carry out the purposes of this act, the division or its designee upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized:

(a) to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace, or environment where work is performed by an employee of an employer; and

(b) to inspect and investigate during regular working hours and at other reasonable limits and in a reasonable manner, any such workplace and all pertinent methods, operations, processes, conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator agent, or employee.

(2) In making its inspections and investigations under this act the division or designee may require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the district court. In case of a failure, or refusal of any person

to obey such an order, any district court within the jurisdiction of which such person is found, or resides or transacts business, upon the application by the division, shall have jurisdiction to issue to such person an order requiring such person to appear to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question, and any failure to obey such order of the court may be punished by the court as a contempt thereof.

(3)(a) Each employer shall make, keep and preserve, and make available to the division, such records regarding his activities relating to this act as the division may prescribe by regulation as necessary or appropriate for the enforcement of this act or for developing information regarding the causes and prevention of occupational accidents, diseases, and illnesses. In order to carry out the provisions of this subsection such regulations may include provisions requiring employers to conduct periodic inspections. The division shall also issue regulations requiring that employers, through posting of notices or other appropriate means, keep their employees informed of their protections and obligations under this act, including the provisions of applicable standards.

(b) The division shall prescribe regulations requiring employers to maintain accurate records of, and to make periodic reports on, work-related deaths, injuries, and illnesses other than minor injuries requiring only first aid treatment and which do not include medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(c) The division shall issue regulations requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under section 6. Such regulations shall provide employees or their representatives with an opportunity to observe such monitoring or measuring and to have access to the records thereof. Such regulations shall also make appropriate provision for each employee or former employee to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by an applicable occupational safety and health standard promulgated under section 6, and shall inform any employee who is being thus exposed for the corrective action being taken.

(4) Any information obtained by the division or a state agency under this act shall be obtained with minimum burden upon employers, especially those operating small businesses. Unnecessary duplication of efforts in obtaining information shall be reduced to the maximum extent feasible.

(5) A representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the division's authorized representative during the physical inspection of any workplace under subsection (1) for the purpose of aiding such inspection. Where there is no authorized employee representative, the division's authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the workplace. The employees representative shall not lose any privileges or compensation during, or because of his attendance in any such physical inspection, Any loss of privileges, or compensation authorized by the employer toward such employees' representative shall create a presumption of discrimination under section 11(3).

(6)(a) Any employees or representatives of employees who believe that a violation of an adopted safety or health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice to the division's authorized representative of such violation or danger. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employees or representative of employees, and a copy shall be provided the employer or his agent no later than at the time of inspection, except that, upon request of the person giving such notice, his name and the names of individual employees referred to herein shall not appear in such copy or on any record published, released, or made available pursuant to subsection (7) of this section. If upon receipt of such notification the division's authorized representative determines there are reasonable grounds to believe that such violation of our adopted standard or danger exists, he shall make a special inspection in accordance with the provisions of this section as soon as practicable to determine if such violation or danger exists. If the division's authorized representative determines there are no reasonable grounds to believe that a violation or danger exists, he shall notify the employees or representative of the employees in writing of such determination.

(b) Prior to or during any inspection of a workplace, any employees or representative of employees employed in such workplace may notify the division or any representative of the division responsible for conducting the inspection, in writing, of any violation of an adopted safety or health standard which they have reason to believe exists in such workplace. The division shall, by regulation, establish procedures for informal review of any refusal by a representative of the division to issue a citation with respect to any such alleged violation and shall furnish the employees or representative of employees requesting such review a written statement of the reasons for the division's final disposition of the case.

(7)(a) The division is authorized to compile, analyze, and publish, either in summary or detailed form, all reports or information obtained under this section, subject to the limitations set forth in section 15.

(b) The division shall prescribe such rules and regulations as they each may deem necessary to carry out their responsibilities under this act, including rules and regulations dealing with the inspection of any employer's workplace.

COMMENT: Almost word for word, with some additions from OSHA sec. 8 which fulfills the requirement of OSHA sec. 18(c) 3, with respect to right of entry (section (1) herein).

CITATIONS

Section 9. Citations. (1) If upon inspection or investigation, the division or its authorized representative believes that an employer has violated a requirement of section 5, of any standard, code, rule, or order issued under section 6, or of any regulations prescribed under this act, he shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the act, standard, code, rule, regulation, or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation. The division may prescribe procedures for the issuance of a notice in lieu of a citation with respect to de minimus violations which have no direct or immediate relationship to safety or health.

(2) Each citation issued under this section, or a copy or copies thereof, shall be prominently posted by the employer as prescribed in regulations issued by the administrator, at or near each place a violation referred to in the citation occurred.

(3) No citation may be issued under this section after the expiration of six (6) months following the occurrence of any violation.

COMMENT: Almost precisely the language of OSHA Sec. 9 and more than encompasses our 41-1718 on notice of violation.

PROCEDURE FOR ENFORCEMENT

Section 10. (1) If, after an inspection or investigation, the division issues a citation under section 9(a), it shall, within a reasonable time after the termination of such inspection or investigation, notify the employer by certified mail of the penalty, if any, proposed to be assessed under section 24 and that the employer has fifteen (15) working days within which to notify the division that he wishes to contest the citation or proposed assessment of penalty. If, within fifteen (15) working days from the receipt of the notice issued by the division the employer fails to notify the division that he intends to contest the citation or proposed assessment of penalty, and no notice is filed by any employee or representative of employees under subsection (3) within such time, the citation and the assessment, as proposed, shall be deemed a final order of the commission and not subject to review by any court or agency.

(2) If the division has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the period permitted for its correction, which period shall not begin to run until the entry of a final order by the commission in the case of any review proceedings under this section initiated by the employer in a good faith and not solely for delay or avoidance of penalties, the division shall notify the employer by certified mail of such failure and of the penalty proposed to be assessed under section 24 by reason of such failure, and that the employer has fifteen (15) working days within which to notify the division that he wishes to contest the division's notification or the proposed assessment of penalty. If, within fifteen (15) working days from the receipt of notification issued by the division, the employer fails to notify the division that he intends to contest

the notification or proposed assessment of penalty, the notification and assessment, as proposed, shall be deemed a final order of the commission and not subject to review by any court or agency.

(3) If an employer notifies the division that he intends to contest a citation issued under section 9(1) or notification issued under subsection (1) or (2) of this section, or if, within fifteen (15) working days of the issuance of a citation under section 9(1), any employee or representative of employees files a notice with the division alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the division shall immediately advise the commission of such notification, and the commission shall afford an opportunity for a hearing consistent with the hearings procedure under Title 82, Chapter 42. The commission shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the division's citation or proposed penalty, or directing other appropriate relief, and such order shall become final thirty (30) days after its issuance. Upon a showing by an employer of a good faith effort to comply with the abatement requirements of a citation, and that abatement has not been completed because of factors beyond his reasonable control, the division, after an opportunity for a hearing, as provided in this subsection, shall issue an order affirming or modifying the abatement requirements in such citation. The rules of procedure prescribed by the commission shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings under this subsection.

COMMENT: Patterned closely after OSHA Sec. 10, and it is a federal requirement for enforcement under sections 18(c)(4) and (5). It also greatly enlarges our 41-1718 and 1720. Cross reference former 41-1719 in section 23 of this draft.

JUDICIAL REVIEW

Section 11. (1) Any person adversely affected or aggrieved by an order of the commission issued under subsection (3) of section 10 may obtain a review of such order in any district court in the county in which the violation is alleged to have occurred or where the employer has its principal office by filing in such court within thirty (30) days following the issuance of such order a written petition praying that the order be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the commission and to the other parties, and thereupon the commission shall file in the court the record in the proceeding as provided in section 82-4216. Upon such filing, the court shall have jurisdiction of the proceeding and of the questions determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in the record a decree affirming, modifying, or setting aside in whole or in part, the order of the commission and enforcing the same to the extent that such order is affirmed or modified. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the commission. No objection that has not been urged before the commission shall be considered by the court, unless the failure or neglect to urge such objection may be excused because of extraordinary circumstances. The findings of the commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the commission, the court may order such additional evidence to be taken before the commission and to be made a part of the record. The commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it, the jurisdiction of the court shal be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Montana supreme court as provided for in civil actions by statute and court rule. Petitions filed in district court under this subsection shall be heard expeditiously.

(2) The division may also obtain review of enforcement of any final order of the commission by filing a petition for such relief in the district court in the county in which the alleged violation occurred or in which the employer has its principal office, and the provisions of subsection (1) shall govern such proceedings to the extent applicable. If no petition for review, as provided in subsection (1), is filed within thirty (30) days after service of the commission's order,

the commission's findings of fact, conclusive of law, and order shall be conclusive in connection with any petition for enforcement which is filed by the division after the expiration of such thirty (30) day period. In any case, as well as in the case of a noncontested citation or notification by the division which has become a final order of the commission under subsection (1) and (2) of section 10, the clerk of court, unless otherwise ordered by the court, shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the division and the employer named in the petition. In any contempt proceeding brought to enforce a decree of a district court entered under this subsection or subsection (1), the court may assess the penalties provided in section 24, in addition to invoking any other available remedies.

(3)(a) No person shall discharge or in any manner discriminate against any employee because the employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by the act.

(b) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of this subsection may, within thirty (30) days after such violation occurs, file a complaint with the division alleging such discrimination. Upon receipt of such complaint, the division shall cause such investigation to be made as it deems appropriate. If upon such investigation, the division determines

that the provisions of this subsection have been violated, it shall expeditiously forward a report of the investigation to the commissioner of the department of labor and industry for action to restrain violations of subsection (a) of this subsection and order all appropriate relief including rehiring or reinstatement of the employee to his former position with back pay.
(c) Within thirty (30) days of the receipt of a report received from the division under this subsection the commissioner shall notify the complainant of its determination under paragraph (b) of this subsection.

COMMENT: OSHA sec. 11 on judicial review modified to state custom. This more than includes 41-1721-24 and 69-4218, the hearing and judicial review sections we now have.

REVIEW COMMISSION

Section 12. Creation of the Montana occupational safety and health review commission--duties--functions.
(1) The Montana occupational safety and health review commission is hereby created. The Commission shall be composed of five (5) members who shall be appointed by the governor from among persons who by reason of training, education, or experience are qualified to carry out the quasi-judicial functions, as defined by section 82A-103 (10), of the commission under this act. the governor shall appoint a chairman who shall be an attorney admitted to practice law in Montana and who shall be a member of the general public. Two (2) members shall be representatives of the viewpoint of employers, and two (2) members shall be representatives of the viewpoint of employees. The commission shall be created and appointed by the governor generally consistent with the provisions of section 82A-112, except where expressly inconsistent herein.
(2) The commission shall have its principal office in Helena, Montana. The commission may

be afforded space and quarters by the workmen's compensation division for the conduct of its functions and duties.

(3) The commission may hire or contract for hearing examiners or use those of the workmen's compensation division as deemed advisable by agreement between the commission and the administrator of the workmen's compensation division.

(4) The functions and duties of the commission shall be those quasi-judicial functions enumerated in this act and consistent with sections 82A-103 (10) and 82A-112.

(5) Every official act of the commission shall be entered of record and its hearings and records shall be open to the public. The commission is authorized to make such rules of procedure as are necessary for the orderly conduct of business. Unless the commission has adopted a different rule its proceedings shall be in accordance with the "Montana Administrative Procedure Act" (Title 82, Chapter 42, R.C.M. 1947), and its creation and organization consistent with the "Executive Reorganization Act of 1971" (Title 82A, R.C.M. 1947).

(6) The commission may compel testimony and production of documents and records by subpoena or by deposition and the party so served by such testimony shall compensate the witnesses according to the existing fees and mileage provided by law for civil cases.

(7) A hearing examiner appointed by the commission shall hear and make a determination upon any proceeding instituted before the commission and any motion in connection therewith, assigned to such hearing examiner by the chairman of the

commission and shall make findings of fact and conclusions of law to be the basis for a commission order of any such determination which constitutes his final disposition of the proceedings. The hearing examiner shall transmit his findings and conclusions to the commission not later than thirty (30) days after the final hearing on the matter, or the receipt of additional depositions or documentations as deemed necessary or advisable, whichever occurs last. A full and complete stenographic transcript of the proceeding shall be taken by a court reporter and made a part of the file. The findings and conclusions of the hearing examiner shall become the final order of the commission not later than thirty (30) days after the commission receives such findings and conclusions from the hearing examiner, unless within such period any commission member has directed that the findings and conclusions shall be reviewed by the commission.

(8) The commission may hire or contract for an attorney or legal advisor as it deems necessary, or use the office of the attorney general.

(9) The commission shall be funded and provided for in the budget of the division. The commission members shall be reimbursed for actual and necessary expenses incurred while in the performance of commission duties. The commission member shall also be paid one hundred dollars ($100) for each day in which he is actually and necessarily engaged in the performance of commission duties, not to exceed, however, five hundred dollars ($500) a month.

(10) HEARINGS AND INVESTIGATIONS

Statutory rules of evidence. All hearings and investigations before the commission, any member thereof, its duly appointed hearing examiners, the division, or any designee thereof, shall be governed by this act and by rules of procedure and practice to be adopted by the commission and division respectively, and in the conduct of hearings neither the commission, its members, its hearing examiners, the division, or the division's designee, shall be bound by the statutory rules of evidence. No informality in any proceedings or in the manner of taking testimony shall invalidate any order, decision, award, rule, or regulation made, approved, or confirmed by the commission or the division.

IMMINENT DANGERS

Section 13. Procedures to counteract imminent danger: Initial jurisdiction is to counteract imminent dangers, as defined by section 3(14) shall be in the division under the following procedures: (1) the division or its authorized representative thereof, with the approval of the division, or the bureau chief, may order any place of employment closed, or the work therein to cease if it is found that the place of employment is in such an unsafe condition as to constitute an imminent danger to the workmen employed therein. Any such order of closure or for cessation of work shall be expressly limited to only that portion of the plant, installation or facility as is directly and immediately affected by the unsafe condition constituting an imminent danger to the workmen employed therein. Upon issuance of any such order, the division or bureau chief shall fix a place and time, not later than twenty-four (24) hours thereafter, for a hearing to be held before the board. Not more than twenty-four (24) hours after the commencement of the hearing, and without adjournment thereof, the division shall affirm, modify, or set aside the order. Nothing in this section shall empower the bureau chief to determine that any employment or place of employment is in an unsafe condition on the basis of the number or qualifications of employees operating such employment or place of employment unless a specific rule adopted after public hearing is violated. Provided that for those employments or workplaces for which no standards have been adopted and where it is found by the bureau chief that such workplace is in such an unsafe condition as to constitute an imminent danger to the workmen there employed, the bureau chief may order that portion of the plant, installation or facility as is directly and immediately affected by such unsafe condition closed for a period not to exceed four (4) hours unless such period be extended by order of the division for a period not to exceed twenty-four (24) hours in addition to the initial four (4) hours closure. If the procedures provided in this section are not sufficient to eliminate, avoid, correct, or remove the imminent danger, then the district courts shall jurisdiction, upon petition of the division, to restrain an imminent danger. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove such imminent danger or to maintain the capacity of a continuous process operation to resume normal operations without a complete cessation of operations, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner.

(2) Upon the filing of any such petition the court shall have jurisdiction to grant such injunctive relief or temporary restraining order pending the outcome of an enforcement proceeding pursuant to this act. The proceeding shall be as provided for by statute (generally Title 93, Chapter 42, R.C.M. 1947) except that no temporary restraining order issued without notice shall be effective for a period longer than five (5) days.

(3) Whenever and as soon as an inspector conclude that conditions or practices described in subsection (1) exist in any workplace he shall inform the affected employees and employers of the danger and that he is recommending to the division that relief be sought.

(4) If the division arbitrarily or capriciously fails to seek relief under this section, any

employee who may be injured by reason of such failure, or the representative of such employees, may bring an action against the division in the district court in the county in which the imminent danger is alleged to exist or in which the employer has its principal office for a writ of mandamus to compel the division to seek an order and for such further relief as may be appropriate.

(5) Nothing in this section shall enpower the division to determine that any workplace is an unsafe condition on the basis of the number or qualifications of employees operating the workplace, unless a specific adopted standard, rule or order is violated, or section 5 is violated.

COMMENT: Basically 41-1720, plus section 13 of OSHA.

REPRESENTATION IN CIVIL LITIGATION

Section 14. Legal representation. The division may use the attorney general as its legal advisor and representative or may hire or contract for any other attorney or legal advisor, as it deems necessary or convenient, to represent the division in any litigation, enforcement proceeding, hearing, or other proceeding emanating from the administration of this act.

COMMENT: State custom and in combination with section 4 ensures legal authority as federally required by OSHA sec. 18(c)(4).

CONFIDENTIALITY OF TRADE SECRETS

Section 15. Confidentiality of trade secrets. All information reported to or otherwise obtained by the division, or its authorized representatives or any employee in connection with any inspection or proceeding under this act which contains or which might reveal a trade secret shall be considered confidential except that such information may be disclosed to other officers or employees concerned with carrying out this act or when relevant in any proceeding under this act. In any such proceeding the administrator, division, review commission, or the court shall issue orders as may be appropriate to protect the confidentiality of trade secrets.

COMMENTS: This would appear to be a reasonable business safeguard to preserve from OSHA sec. 15.

MISCELLANEOUS PROVISIONS:

AGENCIES OF THE STATE,
AND ITS POLITICAL SUBDIVISIONS,
SAFETY PROGRAMS AND RESPONSIBILITIES

Section 16. State agencies and political subdivisions of the state to effectuate equivalent program. (1) To the extent the division may impose, it shall be the responsibility of the head of each state agency and each political subdivision of the state to establish and maintain an effective and comprehensive occupational safety and health program which is consistent with the standards promulgated under section 6. Each state agency and political subdivision of the state shall, after consultation with representatives of employees thereof:

(a) provide safe and healthful places and conditions of employment, consistent with the standards set under section 6.

(b) acquire, maintain, and require the use of safety equipment, personal protective equipment, and devices reasonably necessary to protect employees.

(c) keep adequate records of all occupational accidents and illnesses for proper evaluation and necessary corrective action;

(d) consult with the division with regard to the adequacy as to form and content of records kept under subsection (1)(c) of this section; and

(e) make an annual report to the division with respect to occupational accidents and injuries and the agency's program under this section.

(2) The division shall report to the governor a summary or digest of reports submitted to him under section (1)(e) of this section, together with his evaluations of and recommendations derived from such reports.

(3) The division shall have access to records and reports kept and filed by all state agencies and political subdivisions under subsections (1) (c) and (e) of this section.

COMMENTS: This is a requirement of the state plan under OSHA sec. 18 (c) (6) requiring the state to assure that other public agencies of the state, and its political subdivisions will have a comprehensive safety and health program at least as effective as those contained in the state plan. A report from the governor to the Legislative Assembly might well be included in (2) if deemed advisable.

STATISTICS

Section 17. (1) In order to further the purpose of this act, the division in consultation with the department shall develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics. Such program may cover all employments whether or not subject to any other provisions of this act but shall not cover employments excluded by section 4(2). The division shall compile accurate statistics on work injuries and illnesses which shall include all disabling, serious, or significant injuries and illnesses, whether or not involving loss of time from work, other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(2) To carry out its duties under subsection (1) of this section, the division may:

(a) Promote, encourage, or directly engage in programs of studies, information and communication concerning occupational safety and health statistics;

(b) Assist agencies or political subdivisions in developing and administering programs dealing with occupational safety and health statistics; and,

(c) Arrange, through assistance, for the conduct of research and investigations as give promise of furthering the objectives of this section.

(3) The division may, with the consent of any state agency or political subdivision of the state accept and use the services, facilities, and employees of the state agencies or political subdivisions of the state, with or without reimbursement, in order to assist it in carrying out its functions under this section.

(4) On the basis of the records made and kept under section 8(3), employers shall file such reports with the division as it shall prescribe by regulation, as necessary to carry out its functions under this act.

(5) Agreements between the U. S. department of labor and the state of Montana pertaining to the collection of occupational safety and health statistics already in effect on the effective date of this act shall remain in effect until superseded.

(6) The division shall require all employers to file with the secretary of labor all reports required by Public Law 91-596 found at 29 CFR 1904 directly with the secretary as required.

TRAINING AND EMPLOYEE EDUCATION

Section 18. (1) The division, after consultation with other appropriate state departments and agencies, shall conduct, directly or by assistance: (a) Education programs to provide an adequate supply of qualified personnel to carry out the purpose of this act, and (b)

Informational programs on the importance of and proper use of adequate safety and health equipment.

(2) The division is also authorized to conduct, directly or by assistance, training of personnel engaged in work related to its responsibilities under this act.

(3) The division shall: (2) Provide for the establishment and supervision of programs for the education and training of employers and employees in the recognition, avoidance, and prevention of unsafe or unhealthful working conditions in employments covered by this act; (b) Consult with and advise employers and employees as to effective means of preventing occupational injuries and illnesses, and, (c) Provide safety and health workplace surveys.

> COMMENT: Another requirement of OSHA sec. 18 (c)(4) requiring qualified personnel.

MERIT SYSTEM

Section 19. Workmen's compensation division to be included under joint merit system. The administrator shall, as immediately as is practicable, after the effective date of this act, take such steps as is necessary to have the workmen's compensation division included under the Montana joint merit system as administered by the merit system council created in section 82A-206, R.C.M. 1947, and as required by Title 29, Labor, Chapter XVII, of the occupational safety and health administration, department of labor, part 1902.3, specific criteria for state plan, (h) personnel as published in 36 F.R. 20753 (October 29, 1971).

> COMMENT: This should agree with the federal requirements under the indices as well as 34, Opinions of the Attorney

General, No. 33 (January 25, 1972). The attorney general has a request from the division, at this writing, to explain his 340 p.a.g. 33 in greater detail and give legislative guidelines.

ANNUAL REPORTS

Section 20. Annual reports. The division shall file: (1) A report with the governor pursuant to sections 82-4001 and 82-4002, covering the activities involved in the implementation and administration of this act, and

(2) Such reports to the U. S. secretary of labor, in such form and containing such information, as the secretary shall from time to time require.

COMMENT: This should accommodate both state and federal report-making requirements. Language in (2) came directly from OSHA sec. 18(c)(8).

POWERS OF ADMINISTRATOR

Section 21. Powers of the administrator. The administrator is hereby vested with full power, authority, and jurisdiction to do and perform any and all things in order to carry out the legislative intent of this act, whether herein specifically, or expressly designated, or in addition thereto and implied, which are necessary or convenient, in the exercise of any power, authority, or jurisdiction conferred upon the division under this act.

COMMENT: Typical "all powers necessary" to the administrator clause needed to provide for purely administrative functions, such as: rules; regulations; orders; creating forms, procedures, etc; necessary to administer the legislative intent of the act. Also ensures legal authority under OSHA sec. 18(c)(4) adequate for enforcement.

ADVANCED RATES FOR DANGEROUS PLACES OF EMPLOYMENT

Section 22. Section 92-1105.1 R.C.M. 1947, is amended to read as follows:

92-1105.1. Advanced rate for dangerous places of employment. If, by reason of poor or careless management or otherwise, any place of employment be unduly dangerous in comparison with other like places of employment, and the employer operating the same shall not have complied with the safety ~~provisions~~ standards of the "Montana Occupational Safety and Health Act of 1973", and such employer shall be under compensation plan number 3, the ~~board~~ division, in addition to any other penalty provided, shall advance the rate upon such place of employment fifty ~~(50)~~ per cent (50%) and such advanced rate shall continue and be in force until such place of employment shall have ceased to be unduly dangerous in comparison with other like places of employment and such employer shall have obtained a certificate of the ~~board~~ division.

COMMENT: Housekeeping changes to make it consistent with new name changes.

CONSTRUCTION AND EFFECT

Section 23. Construction and effect. It is intended that: (1) Nothing in this act shall be deemed to limit or repeal requirements imposed by statute or otherwise recognized by law.

(2) Nothing in this act shall be construed or held to supersede or in any manner affect the workmen's compensation act (Title 92) or to enlarge or diminish or affect in any other manner the common law or statutory right, duties, or liabilities of employers and employees under any law with respect to injuries, occupational or other diseases, or death of employees arising out of, or in the course of employment.

(3) This act be consistent and in harmony with the "Executive Reorganization Act of 1971" insofar as is feasible, and is only expressly inconsistent to the degree that this act must meet federal

requirements for federal aid. (See 82A-122)

(4) This act be consistent and in harmony with the "Montana Administrative Procedure Act" insofar as is feasible, and in only expressly inconsistent to the degree that good cause is shown or it is done to meet necessary federal requirements.

> COMMENT: This is included primarily as an additional saving provision vis-a-vis executive reorganization and the administrative procedure act. It clearly states anything contained herein is here for an express purpose and thus the burden of harmonizing with those bills is waived. (See 82-4223 and general provisions of executive reorganization.)

PENALTIES

Section 24. Penalties for violations - civil and criminal. (1) Civil penalties under this act shall be as follows:

(a) Any employer who has received a citation for a violation of the requirements of section 5, of any standard, code, rule, or order issued under section 6, or of regulations prescribed under this act, and such violation is determined not to be of a serious nature, may be assessed a civil penalty not exceeding one thousand dollars ($1000) for each violation.

(b) Any employer who has received a citation for a serious violation of the requirements of section 5, of any standard, code, rule, or order promulgated under section 6, or of any regulations prescribed under this act, shall be assessed a civil penalty not exceeding one thousand dollars ($1000) for each violation.

For purposes of this subsection, a serious violation shall be deemed to exist in a workplace if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(c) Any employer who fails to correct a violation for which a citation has been issued under section 9(1) within the period permitted for its correction, which period shall not begin to run until the date of the final order of the review commision in the case of any review proceeding under section 10 initiated by the employer in good faith and not solely for delay or avoidance of penalties, may be assessed a civil penalty not exceeding one thousand dollars ($1000) for each day during which the failure or violation continues.

(d) Any employer who violates any of the posting requirements, as prescribed under the provisions of this act, shall be assessed a civil penalty not exceeding one thousand dollars ($1000) for each violation.

(e) Any employer who wilfully or repeatedly violates the requirements of section 5, any standard, code, rule, or order promulgated under section 6, or regulations prescribed under this act, may be assessed a civil penalty not exceeding ten thousand dollars ($10,000) for each violation.

(2) Criminal penalties under this act shall be as follows:

(a) Any employer who wilfully violates any standard, code, rule, or order issued under section 6, or of any regulations issued under this act, and that violation caused death to any employee, shall, upon conviction, be punished by a fine not exceeding ten thousand dollars ($10,000) or by imprisonment not exceeding six (6) months in the county jail, or by both except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine not exceeding twenty thousand ($20,000) or by imprisonment not exceeding one (1) year in state prison, or by both.

(b) Any person who gives advance notice of any inspection to be conducted under this act, without authority from the administrator or his designees, shall, upon conviction be punished by a fine not exceeding one thousand dollars ($1000) or by imprisonment not exceeding six (6) months in county jail, or by both.

(c) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this act shall, upon conviction, be punished by a fine not exceeding ten thousand dollars ($10,000) or by imprisonment not exceeding six(6) months in county jail, or by both.

(d) Any person who assaults a division compliance officer, inspector, investigator, or its authorized designee shall, upon conviction, be punished by a fine not exceeding five thousand dollars ($5000) or by imprisonment consistent with section 94-5-201, Assault, of the Criminal Code, or by both.

(e) Any person who assaults a division compliance officer, inspector, investigator, or its authorized designee, with a deadly weapon, shall upon conviction, be punished by a fine not exceeding ten thousand dollars ($10,000) or by imprisonment consistent with section 94-5-202, Aggravated Assault, of the Criminal Code, or by both.

(f) Any person who kills a person while engaged in or on account of the performance of investigative inspection, or law enforcement provisions of this act, shall, upon conviction, be punished by imprisonment in state prison for a term consistent with the offense under section 94-5-101 through 94-5-105, Homicide, of the Criminal Code.

(3) The review commission shall have the authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

(4) Civil penalties owed under this act shall be paid to the division for deposit into the state treasury to the credit of the general fund and shall accrue to the state of Montana and may be recovered in a civil action by the name of department of revenue brought in district court in the county where the violation is alleged to have occurred or where the employer has its principal office.

COMMENT: All civil penalties are the equivalent of the federal act, except the determination of state prison for one (1) year penalties and over, and county jail for those under one (1) year has been made based on state custom, and no dollar penalty for murder is similar to the state penalty for homicide. (Federal requirement of a ban on advance notice of inspection as per OSHA, Section 18(c)(3) in Subsection (2)(b) herein.)

VIOLATION OF ANY PROVISION

Section 25. Violation of any provision - misdemeanor. In addition to all other penalties herein provided, every employer, or other person, who either individually or acting as an officer, agent, or employee of a corporation, repeatedly violates any provision of this act or adopted standard, or who, directly or indirectly, knowingly induces another to do so, is guilty of a misdemeanor.

COMMENT: . This will be an inclusive misdemeanor penalty and misdemeanor is not otherwise specified as to penalty or punishable under section 94-116, R.C.M. 1947. Punishment of misdemeanors, when not otherwise prescribed by imprisonment in a county jail not exceeding six (6) months, or by a fine not exceeding five hundred dollars ($500) or by both.

SAVINGS CLAUSE

Section 26. Saving provision. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

COMMENT: Standard saving clause.

APPROPRIATIONS SECTION

Section 27. Appropriations and cost of administration. The division shall devote adequate funds to the administration of this act and the enforcement of any standards issued as a result of such administration.

FEDERAL AID

Section 28. Application for Federal aid. The division may make application for, recieve, administer, and expend any federal aid for the administration of any of the provisions of this act, provided the governor approves and forwards such application for aid. The governor shall approve and forward such application for aid if it is consistent with the legislative intent and furthers the administration of this act.

COMMENT: Redraft of 69-4220 in the health act, but merely a blanket federal aid application section.

SEVERABILITY CLAUSE

Section 29. Severability. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid parts remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

COMMENT: Standard severability clause recommended by both the Bill Drafting Manual and the Clerical Manual.

REPEALING CLAUSE

Section 30, Repealer. Sections 41-1708 through 41-1733, R.C.M. 1947, (and possibly others) are repealed.

> COMMENT: Standard repealing clause suggested by our Bill Drafting Manual, repealing the Old Safety Act and possibly parts of the Occupational Health Act and other miscellaneous sections (92-116, 92-1105.1).

EFFECTIVE DATE

Section 31. Effective Date. Sections 19, 27 and 28 of this act are effective upon its passage and approval; all other sections are effective on August 1, 1973.

> COMMENT: This allows crucial administrative sections concerning application to the Merit System, appropriations, and federal aid to take effect the day the governor signs the bill. All other sections would be somewhat delayed beyond the usual July 1 effective date, until September 1, to allow additional start-up time and time for employers to prepare for its advent.

COMPLIANCE
OPERATIONS
MANUAL

BUREAU OF SAFETY AND HEALTH
WORKMEN'S COMPENSATION DIVISION
DEPT. OF LABOR AND INDUSTRY
HELENA, MONTANA

6/28/72

MEMORANDUM:

Our enforcement program will be modified or updated so that it will continue to be at least as effective as the Federal enforcement program.

The attached Montana Operations Manual duplicates the Federal manual whenever possible. In most instances, only title changes are made (i.e., Compliance Supervisor, CS, is state equivalent of Area Director, AD, etc.). This was done so we might be able to take advantage of the time and research put into the Federal document; then, too, most of our work methods are, or can be, readily adjusted to this end.

Many chapters are reserved for obvious reasons. Later, other subject matter pertinent to our state will be introduced as administrative requirements, i.e. use of state vehicles, per diem requirements, etc.

As the Federal manual is revised so also will this manual be revised.

6/28/72

TITLES, IDENTIFICATION AND ABBREVIATIONS

Workmen's Compensation Division (WCD)

New title for the Industrial Accident Board. The Bureau of Safety and Health is one of the Bureaus which make up this Division of the Department of Labor and Industries.

Bureau of Safety and Health (BOSH)

New title of the old Department of Safety.

Chief of the Bureau (BC)

Chief of the Bureau of Safety and Health

Assistant Chief of Safety (ACS)

Assists the Chief in all safety matters.

Assistant Chief of Compliance (ACC)

Assists the Chief in enforcement

Assistant Chief of Health (ACH)

Assists the Chief in all health matters.

Compliance Supervisor (CS)

Supervises the work of compliance officers not assigned to Health, Mines or Boilers.

Training Supervisor (TS)

Supervises all training programs for the Bureau.

Standards Supervisor (SS)

Supervises all Safety Code programs for the Bureau.

Mining Supervisor (MS)

Supervises the work of compliance officers in mining.

Boiler Supervisor (BS)

Supervises the work of compliance officers assigned to boilers.

Safety and Health Compliance Officers (SHCO)

Inspector personnel.

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A. Chief of the Bureau (BC)

1. Duty

It is the duty or mission of the BC to supervise, coordinate, evaluate, and execute all programs of the Bureau of Safety and Health Administration in the state.

2. Responsibilities and Instructions

a. This section delineates functional responsibilities of the Bureau Chief and provides instructions for accomplishment. Changes in these requirements will be effected by issuance of OSH Directives followed by timely revision of the Compliance Operations Manual to incorporate these changes.

b. The functions and their corresponding instructions are divided into two categories, "Administrative and Operational Matters" and "Program Activities", and they are described in the following tables:

TABLE III-1. - - ADMINISTRATIVE AND OPERATIONAL MATTERS

Function	Instruction
Establishment of Area Offices designated.	Carry out as per Bureau of Safety and Health instructions.
Staffing of Area Offices.	As required by Bureau of Safety and Health
Continue on-the-job training for new personnel.	Conduct as needed.
Administrative matters, such as communications, travel vouchers, correspondence preparation, budget preparations, personnel administration, purchase of supplies and equipment, etc.	All WCD Notices and Instructions shall remain in effect until superseded or canceled. The Compliance Operations Manual and these instructions shall supersede any previously issued instructions and notices in areas of conflict.

TABLE III-2. - - PROGRAM ACTIVITIES

Function	Instruction
Enforcement Program (Inspections/ Investigations).	Regular inspection/investigation activities will be carried out by Area Office personnel; therefore, the Bureau Chief's duties are limited to broad supervision and technical support. Site selection and scheduling of inspections will be a coordinated effort between the Headquarter's Office of Compliance, and the Area Offices. Senior engineers assigned to the Headquarter's Office should provide technical assistance to Area Compliance Officers as requested. Technical support should be provided in specialties, such as construction safety, crane safety, industrial hygiene, etc. The Bureau Chief will resolve questions arising from enforcement programs that cannot be solved at the Area level. Problems having statewide scope will be reviewed at the Headquarters Office of Compliance before a final decision is made. Accidents or incidents which may result in statewide publicity must be referred to the Headquarters Office of Compliance at once.
Voluntary Compliance Program	Reserved.
State Grants Program.	Supervise program activities of State Grants personnel.
Construction Safety Act.	See Chapter VII.
Consultative Services.	See Chapter IV.
Training Program.	Reserved.

TABLE III-2.--PROGRAM ACTIVITIES

Function	Instruction

B. Assistant Chief of Compliance (ACS). (Reserved)

C. Compliance Supervisor (CS)

1. Duty

It is the duty or mission of the Compliance Supervisor to carry out the compliance program of the Occupational Safety and Health Act within the designated geographic area. The entire Area Office staff will conduct the activities contained in this section under the supervision and guidance of the BC, using policy instructions received from the Headquarters Office.

2. Responsibilities and Instructions

a. This section delineates functional responsibilities of the Compliance Supervisor and provides instructions for accomplishment. Changes in these requirements will be effected by OSH Directives, followed by timely revision of the Compliance Operations Manual to incorporate such changes.

b. The functions and their corresponding instructions are divided into two categories, "Administrative and Operational Matters" and "Program Activities," and are contained in the following table:

TABLE III-3. --ADMINISTRATIVE AND OPERATIONAL MATTERS

Function	Instruction
Establishment of Area Offices.	To be carried out by the Bureau Chief.
Staffing of Area Offices.	To be carried out by the Bureau Chief in the initial period.
Provide on-the-job training for new personnel.	Conduct as needed, with guidance from the Bureau Chief.
Administrative matters such as communications, travel vouchers, correspondence preparations, budget preparations, personnel administration, purchase of supplies and equipment, etc.	All WCD Notices and Instructions shall remain in effect until superseded or canceled. The Compliance Operations Manual and these instructions shall supersede any previously issued instructions and notices in areas of conflict. The Bureau Chief will issue instructions concerning execution of administrative matters.

TABLE III-4. -- PROGRAM ACTIVITIES

Function	Instruction
Enforcement Program	
General Information	All regular inspection/investigation activities (For a discussion of imminent danger procedures, catastrophe procedures, etc., see Chapters IX and VI) will be carried out by Area Office personnel, under the direct supervision and guidance of the Compliance Supervisor. The Compliance Supervisor may request the assistance of senior engineers assigned to the Headquarter's Office on technical matters. Site selection and scheduling of inspections will be coordinated with the Headquarters Office. The Bureau Chief should be requested to resolve questions arising from enforcement programs that cannot be resolved by the Compliance Supervisor. Programs having statewide scope will be reviewed with the Headquarters Office of Compliance through notification of the Bureau Chief. Detailed instructions concerning inspection/investigation procedures are given in other sections of the Compliance Operations Manual; those instructions will not be repeated here.
Programing of enforcement activities.	Coordinate with the Bureau Chief.
General inspection procedure.	See Chapter V.
Inspection during strike or labor dispute involving a work stoppage or picketing.	See Chapter V.
Authorization for abatement period in excess of 30 days.	The Compliance Supervisor is authorized to grant such abatement period, but only after receipt of all necessary information pertaining to the situation and after consulting the SHCO making the inspection.

TABLE III-4.--PROGRAM ACTIVITIES -- Continued

Function	Instruction
Forcible interference with inspection activities.	Upon receiving a report of such forcible action, the Compliance Supervisor will notify the Bureau Chief who, in conjunction with the Bureau Solicitor, will decide what course of action to follow.
Proposed penalty assessment.	See Chapter XI.
Area Summary Report.	Follow instructions in Chapter XII.
Special Enforcement (Other than regularly scheduled inspection/investigation).	
Catastrophe and/or fatality investigation.	Follow general instructions set forth in Chapter VI. Priorities of investigations will be determined by the Compliance Supervisor. In the investigation of fatalities, the Compliance Supervisor will cooperate with the Bureau Chief and Bureau Solicitor.
Complaint investigation.	Instructions in Chapters IV and VI of the Compliance Operations Manual shall be followed. The Compliance Supervisor's responsibilities include determining priorities for complaint investigations as well as deciding whether or not a complaint requires an inspection. (A written notification is necessary in that case, as pointed out in Chapter VI.)
Imminent danger procedures.	Follow instructions set forth in Chapter IX.
Special Compliance Activities.	
Consultative services.	See Chapter IV.
Training.	See Chapter IV.
Other Duties Related to Program Activities.	

TABLE III-4.--PROGRAM ACTIVITIES--Continued

Function	Instruction
Variance procedures.	Reserved
Changes to standards.	Reserved
Procedures concerning subpoenas and testifying at hearings.	The Compliance Supervisor should refer the matter to the Bureau Solicitor for action and notify the Bureau Chief.
Request for Bureau publications or other information.	Forward to the Bureau Chief.
Reporting and record-keeping procedures.	Follow instructions in Chapter III and Chapter XII.
Security Clearance.	See Chapter IV. The Compliance Supervisor should make arrangements to have at least one or two employees with proper clearances on his staff, or available from the Headquarters Office.
Disclosure and publicity.	See Chapter XXIV.

3. Correspondence With the Public

a. Communications to an employee shall be sent only to the employee's home address unless he has specifically requested that mail be sent to him in care of his employer. If the employee's home address is not known and he has not specifically asked that mail be sent to him in care of his employer, it is not necessary to acknowledge his communication or to notify him of the inspection results.

b. The official franked envelope shall be used when writing an employee.

c. Clerical and stenographic personnel shall not answer questions concerning the coverage or application or provisions of the Act, but shall refer such questions to professional personnel. However, if appropriate, field office secretaries may be authorized by their supervisors to: answer inquiries about provisions of the Act where the answer is clear and readily available based on the facts presented.

D. Safety and Health Compliance Officer (SHCO)

1. General Requirements

All SHCO's must adhere to the rules of conduct prescribed for State employees in general. They must also adhere to certain rules, regulations, and requirements that apply particularly to them as inspectors. The following sections set forth certain regulations and requirements which are particularly concerned with the conduct of SHCO's. Other regulations and requirements are discussed in the Administrative Manual and include the following: political activity; membership in employer or employee organizations; report of accident or injury while on the job; outside employment; newspaper clippings; and report of damaged, lost, or stolen property.

2. Personal Conduct and Activities

a. Courtesy to the public.

The Bureau of Safety and Health (BOSH) emphasizes that the proper and courteous discharge of duties and responsibilities by SHCO's is essential to the enforcement and administration of the Act. The SHCO's are the primary representatives of BOSH in public relations. The ultimate success of the compliance program largely depends upon their knowledge and understanding of the Act and regulations, as well as upon their courtesy and tact in dealing with employers and employees. SHCO's represent the State of Montana and must at all times conduct themselves in such a manner as to reflect that responsibility. They must never allow themselves to indulge in conduct or statements unbecoming their position, even when such conduct or statements are invited or incited by those with whom they are dealing.

b. Acceptance of gratuities.

No BOSH officer or employee shall solicit, accept, or agree to accept, directly or indirectly, any favor, gift, loan, free service, or other item of economic value, in any form whatsoever, from any outside person, corporation, or group, which might reasonably be interpreted by others as being of such nature that it could affect his impartiality, if the employee has reason to believe that the person, corporation or group (1) has or is seeking to obtain contractual or other business of financial relationships with BOSH; (2) conducts operations or activities which are regulated by BOSH; (3) has interests which may be substantially affected by such employee's performance or nonperformance of his official duty; or (4) is attempting to reward or influence the employee's official actions. This rule will not prevent an officer or employee from accepting an award publicly, bestowed for outstanding achievement in Government services.

c. Subpoenas served on SHCO's.

A SHCO, upon being served with a subpoena, shall immediately communicate with his Compliance Supervisor and give him all pertinent information. The Compliance Supervisor should refer the matter to the Bureau Solicitor for action, and notify the Bureau Chief. A SHCO shall not accept payment for testimony at a Federal hearing.

d. Testifying in hearings.

The SHCO may be required to give testimony in hearings on behalf of the Government. The SHCO should keep this fact in mind when he is conducting an inspection and recording his observations. His reports must reflect conditions accurately and any report which contains an element of the time of day must be the actual time the SHCO was involved. If the SHCO is called on to testify, his report will be invaluable as a means to recalling actual conditions and reinforcing the facts in his mind.

3. Release of Inspection Information

a. Authority to enter the establishment and inspect and investigate is established by Section 8 of MOSHA-1973. The information obtained from these inspections and investigations is confidential. Requests for the public release of any information should be directed to the Compliance Supervisor. (See Chapter XXIV for additional information).

b. Any written inquiry received by a SHCO concerning an inspection shall be transmitted to the Compliance Supervisor.

c. Whenever a SHCO receives a request for informational materials of other State Administrations, he shall channel the request to the CS.

d. At the commencement of an inspection the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the SHCO has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs, and environmental samples, shall be labeled "confidential--trade secret" and shall not be disclosed except as directed by the Bureau Chief.

e. With respect to authorized representatives of employees accompanying SHCO's in areas containing trade secrets, see Chapter V.

4. Disposition of Inspection Work Papers

"Inspection work papers" are any notes, memoranda, or records made by a SHCO concerning, relating to, or as a part of any inspection, or concerning, relating to, or as a part of the performance of any of his official duties. Such original material and all copies must be included in the case file where necessary to support the inspection findings. These papers are the property of the State of Montana and a part of the case file. Inspection work papers are not the property of the SHCO and under no circumstances are they to be retained by him or used for any private purpose. Copies of documents, notes, and any other recorded information not necessary to support the inspection findings, or not pertinent or suitable for inclusion in the case file, shall be destroyed.

5. Correspondence With the Public

SHCO's will not normally correspond with the public except as necessary to confirm or arrange appointments or other inspection details. All formal correspondence with the public shall be submitted to the CS for approval. (See paragraph C.3 of this Chapter for other requirements concerning correspondence with the public.)

6. Inquiries

a. Discussions of application of the Act.

(1) Frequently during an inspection the SHCO may be asked by an employer, or his representative, about the coverage or application of the Act. These questions usually will be such that the SHCO may answer them by referring to applicable safety and health standards or other appropriate documents. Questions about which the SHCO has any doubt shall be referred to the Compliance Supervisor.

(2) Instructions for clerical and stenographic personnel are contained in paragraph C.3 of this Chapter.

b. Written inquiries received by inspectors.

A written inquiry received by any SHCO concerning an inspection shall be referred to the Compliance Supervisor.

c. Written communications concerning application of the Act shall be signed only by the Compliance Supervisor, or other persons who have been authorized to do so by the BC.

d. Requests for Bureau information or publications.

Whenever a SHCO receives a request for information materials of other WCD sections, he shall transmit the request to the BC. An effort will be made by the BC to fill the request through cooperation with the other section offices. The request shall be transmitted to the Headquarters Office of Compliance, which will contact the office of the appropriate section. Under this procedure all requests for WCD publications will receive appropriate response.

e. Inquiries regarding laws or programs not administered by BOSH.

SHCO's may be asked about the applicability of laws and programs administered by other Federal, State, or local agencies or administrations. For example, employees may inquire regarding the effect of back wage payments on social security benefits, or employers about tax deductions or local labor legislation. Under no circumstances shall the SHCO attempt to advise such parties regarding laws not administered by OSHA. Instead, they shall be referred to the agency or administration responsible for administering the law or program in question.

CHAPTER IV--COMPLIANCE PROGRAMING

A. Program Planning

1. Purpose

To provide general guidance to the CS's in planning compliance operations and related activities.

2. Working Distribution

The primary consideration in conducting compliance operations is the attainment of maximum effective inspection coverage. General guidelines to be used in man-hour scheduling for compliance operations should approximate the following:

	Percent
Catastrophe, fatality, and/or serious injury ----------	30
Complaint (serious and "other") investigation ---------	10
Target Industry Program -------------------------------	45
General inspection and related activities -------------	15

B. Inspection Selection Criteria

1. General Requirements

a. The CS shall establish priorities appropriate to the urgency and seriousness of any alleged violation or situation. The CS shall use the programing information in the preceding Section A as a guide only. If catastrophes and/or fatalities, and complaints of a serious nature require the full utilization of existing manpower, the CS shall accomplish the handling of these problems before releasing manpower for the TIP and general inspection and related activities.

b. Followup inspections will normally be considered within the basic priority activity which generated the requirement. For example, a followup inspection determined necessary as the result of a catastrophe investigation would be considered before those generated by complaint investigations. However, the seriousness and imminence of the hazard or conditions requiring action must be considered.

c. As a general rule, all serious violations shall require followup inspections. All "other" (nonserious) violations shall be considered for followup inspections within the availability of resources. (See Chapter V for additional followup instructions.)

2. Inspection Priorities

Instructions for each category of inspection activity are contained in the following paragraphs. Priority of accomplishment and assignment of manpower resources shall be as follows:

Priority	Category
First	Catastrophe, Fatality, and/or Serious Injury
Second	Complaints
Third	Target Industry
Fourth	General inspection and related activities

3. Inspection Category Instructions

a. Catastrophe and/or fatality investigations.

For the definition of a catastrophe and the procedures to be followed, see Chapter VI.

b. Complaints.

(1) Complaints must be acted upon as soon as possible based on priorities and procedures contained in Chapters IV and VI.

(2) The Compliance Supervisor will establish priorities regarding the action to be taken on complaints. Complaints alleging the existence of an imminent danger shall be accorded the highest priority in accordance with the instructions in Chapter IX. High priority shall also be given to complaints alleging conditions which appear to be serious.

(3) If a complaint is made to an inspector during the course of an inspection, he should act on it as part of that inspection in accordance with the procedures in Chapter V.

(4) When acting on complaints, the SHCO should inspect the entire facility or workplace if time and resources permit, unless there has been a very recent inspection and the SHCO is assured that a total inspection is not necessary. (See Chapter VI.)

c. Target Industry Program (TIP).

(1) To pursue OSHA's goal to deal with the "worst-first" within the resources available to OSHA and because of

the need to make an immediate impact on the problems of occupational safety and health, a Target Industries Program (TIP) was developed. In the first year, efforts will be concentrated on the five industries with the highest reported injury-frequency rates. The five industries selected for this year and fiscal year 1972 are:

MONTANA

TARGET INDUSTRIES

(A) LUMBER AND WOOD PRODUCTS

(B) CONSTRUCTION

(C) PRIMARY SMELTING AND REFINING OF NONFERROUS METAL

(D) MOTOR FREIGHT TRANSPORTATION AND WAREHOUSING

(E) LOCAL GOVERNMENT, EXCEPT SCHOOLS

(2) Reserved

(3) The Compliance Supervisor shall schedule target industries inspections of the establishments identified by the target industry listing. All target industries shall be treated as equally important, and inspected as concurrently as feasible with the others.

d. General inspection and related activities.

(1) Beyond the inspection of catastrophes and/or fatalities, complaints, and the target industries, it is desired to establish BOSH's presence as widely as possible within the framework of available resources.

(2) The general industry program is designed to provide broad representative inspection coverage of the working conditions of employees in an Area. The selection of establishments to be conducted under this program shall be made in accordance with the following factors:

(a) geographical areas within jurisdiction of Area Office

(b) employee population density, and

(c) available BOSH manpower.

(3) These factors shall be considered in such a manner that employee working conditions in every geographical area within the jurisdiction of the Area Office are inspected in proportion to the density of employees in that area (urban, suburban, rural).

(4) In planning general industry inspection activity, CS's shall follow these procedures:

(a) CS's shall select counties within their jurisdictions, taking into account population and establishment concentration, which will ensure as wide a range of geographic coverage as possible.

(b) Within those counties selected, at least one large and one small establishment (on basis of employment size) shall be selected from each two-digit SIC code group in the general industry listings. Additional establishments in a two-digit group may be selected as appropriate in approximate proportion to the industry representation in the county. As in the TIP, a number of firms shall be selected at random from alternate sources of information and scheduled for inspection. As an added factor in establishment selection, CS's shall design their scheduling procedures to be flexible enough to meet special local problems which will undoubtedly arise as the general inspection program proceeds.

(5) Consultation with trade associations, professional groups and societies, unions, educational institutions and other public groups is encouraged only to the extent of manpower availability. The CS shall exercise his management skills and judgment in making decisions regarding allocation of manpower resources in this area.

C. Training

The curriculum and programs for the training of employers and employees will be formulated, conducted, and controlled at the Headquarters Office of Training and Education level. Candidates for training shall be advised of the availability of training courses and be provided with necessary application information.

D. Consultative Services

1. Purpose and Scope

Consultative services, as distinguished from inspections, are performed by BOSH for educational purposes in order to encourage and assist employers in achieving voluntary compliance. Such services shall consist of educational, technical, and promotional advice given to an employer or to trade associations, professional societies, unions, educational institutions and other public groups.

2. Procedure

a. An inspection begins when a SHCO enters an establishment; apparent violations must then be cited. Therefore, when providing consultative services, such consultation shall not be held at any employer's establishment. If an employer requests concultative services, he shall be told that he can meet with BOSH personnel in the Area or Headquarters Office.

b. Consultative services to public groups shall be performed on a priority basis established with the approval of the CS. Safety and health handouts and promotional materials may be used to help educate employers and employees regarding the Act and the standards and regulations.

E. Security

1. Personnel Security Clearances

a. General.

Normally field personnel shall not require access to classified data or restricted areas. However, the appropriate U. S. Department of Defense (DOD) or Atomic Energy Commission (AEC) security clearance requirements shall be met by SHCO's and other field personnel having a need for inspection and investigation activities at establishments with DOD and AEC contracts.

b. Clearance procedures.

(1) Reserved

(2) Reserved

(3) Reserved

(4) Reserved

(5) Reserved

(6) Reserved

c. Employer resistance. (Reserved).

2. Classified Information and Data

a. U. S. Department of Defense and Atomic Energy Commission.

Any documental data and personal knowledge of such data by BOSH personnel shall be handled in accordance with the responsible agency's regulations. The collection of such data, and the number of personnel exposed shall be limited to the minimum necessary for the conduct of compliance activities.

b. Trade Secret.

The confidentiality of trade secrets is recognized. The Bureau Chief, Compliance Supervisors, and SHCO's shall guard and protect such knowledge accordingly. (See Chapter III for confidentiality of trade secrets).

CHAPTER V--GENERAL INSPECTION PROCEDURES

A. SHCO Responsibilities

1. The Safety and Health Compliance Officer's responsibilities are necessarily extensive. The primary responsibility is the conduct of effective inspections to determine whether employers are: (1) complying with safety and health standards and regulations promulgated under the Act, and (2) furnishing places of employment free from recognized hazards that are causing or are likely to cause death or serious physical harm to their employees.

2. The conduct of effective inspections requires identification, professional evaluation, and accurate reporting of safety and health conditions and practices. Inspections may vary considerably in scope and detail, depending upon the circumstances in each case.

B. Advance Notice of Inspections

1. Policy.

   a. The Act (section 26(2)(b) contains a general prohibition against the giving of advance notice of inspections, except as authorized by the Bureau Chief or his designees. This prohibition is intended, in large part, to avoid giving the opportunity for an employer to make minor or temporary adjustments in an attempt to create a misleading impression of conditions in an establishment. On the other hand, there may be occasions when notice is necessary to conduct an effective investigation within the framework of the Act. Consistent with the provisions in the Act, however, it is to be emphasized that it is not our intent to grant broad authorization to give advance notice of inspection in every situation. In any case, where the SHCO or the Compliance Supervisor has reason to believe that advance notice might be abused, it should not be given.

   b. When advance notice is given to an employer, such notice shall also be given to the authorized representative of employees if the identity of such representative is known to the employer. Such advance notice may be given either by the employer or by the SHCO, in accordance with the instructions in paragraph B.2.d. of this Chapter.

   c. Advance notice of inspections may be given only in the following situations: (1) in cases of apparent imminent danger to enable the employer to abate the danger as quickly as possible;

(2) in circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection; (3) where necessary to assure the presence of representatives of the employer and employees or the appropriate personnel needed to aid in the inspection; and (4) in other circumstances where the Compliance Supervisor determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

2. Procedures

a. In the situations described in the preceding paragraph B.1.c. of this Chapter, advance notice may be given only if authorized by the Compliance Supervisor. However, in cases of apparent imminent danger, advance notice may be given by the SHCO without such authorization if the Compliance Supervisor is not immediately available.

b. If it is decided to provide advance notice, the SHCO shall do so by a personal telephone contact, and such notice shall not exceed 24 hours except in apparent imminent danger situations and in other unusual circumstances. Where advance notice is given, the appropriate section in the MTSH-1 Form relating to advance notice shall be filled out.

c. During the initial telephone contact with the employer, the SHCO should make necessary arrangements with respect to matters which occasioned the advance notice. Specifically, the SHCO shall identify himself and advise the employer in general as to the purpose of the inspection and when he expects to appear at the employer's establishment. The SHCO should inquire as to the employer's normal business hours and should arrange for the opening of any workplace which may be the subject of the inspection. If appropriate, the SHCO should ascertain whether there are any security clearances required or any trade secrets which may be exposed during the course of the inspection. If security clearance is required, it will be necessary to notify the cognizant security officer in accordance with the instructions in Chapter IV. The SHCO should arrange for transportation, if required, within the establishment, and ascertain if any special safety precautions or equipment are necessary. The SHCO should make any other advance arrangements he considers necessary to facilitate the inspection.

d. An important purpose of the advance notice is to make arrangements for the presence of a representative of the employer and a representative of the employees to aid in the inspection.

The SHCO should request that a responsible management official be available to assist in the inspection. The SHCO shall also advise the employer that under Section 8(5) of the Act, a representative authorized by the employees shall be given an opportunity to accompany the SHCO during the inspection. The SHCO shall ask the employer whether the employees at the establishment are represented by a labor organization(s) and whether there is a safety committee with employee representatives. The employer shall be asked to identify, if he can, such labor organization(s) or employee representatives on the safety committee. The SHCO shall advise the employer that he, (the employer) is required promptly to notify the authorized representative. Such notification will assure the presence of an authorized representative of employees at the time of the inspection. If the employer requests that the SHCO inform the authorized representative of employees of the inspection, the SHCO should do so, provided that the employer furnishes him with the identity of such representatives and with such other information as is necessary to enable him promptly to contact the representative. The advance notice requirement with respect to employees applies only if there is a known representative authorized by employees, such as labor organization or a safety committee with employee representatives. Advance notice to employees will not be required in the absence of such a representative.

e. It should be made clear to the employer that he is not permitted to designate an employee representative himself. If the employer suggests an employee representative who does not appear to meet the requirements of paragraph F.1 of this Chapter, the SHCO should request the employer to refrain from taking action concerning an employee representative and the SHCO should deal with the matter upon reaching the plant.

f. When advance notice is given to the employer whose establishment will be inspected, the SHCO should ascertain whether any employee of "outside" employers (i.e., employers other than the employer whose establishment will be inspected) are working at the establishment in question. Examples of such employees are painters, electricians, window washers, etc., employed by specialty contractors. If there are such "outside employers" at the establishment, the SHCO shall ascertain their identity and give advance notice of the inspection to such employers by personal telephone contact. The representative(s) of employees of the "outside employer" should be notified of the inspection in the same manner as the representative of employees of the employer whose establishment is being inspected. Thus, the "outside employer" should be requested to notify any authorized representative of his employees. At the request of the "outside employer", the SHCO shall inform the authorized representative of the "outside employer" of the inspection, provided that the "outside employer" furnishes him with the identity of such representative and with such other information as is necessary to enable him promptly to contact the representative.

C. Preparation

1. General

Prior to an inspection of an establishment, the SHCO shall familiarize himself with as many known factors of the establishment's operations as possible and determine which safety standards are pertinent. All pertinent information and data available at the Area Office should be reviewed for relevant factors. These may include area regional case histories or synopsis, or other reported safety and health summaries of hazards and accidents.

2. Applicable Standards

a. The SHCO shall briefly review the Safety Standards that he considers applicable to the type of operation, facility, equipment and industry.

b. Establishments with multiple operations that encompass more than one industry or several facets of a major industry may require more detailed review of the applicable standards.

c. The SHCO should consult (when possible) with area Compliance Officers and other specialists with extensive experience in the industry or segments thereof with which he is not familiar.

3. Equipment

a. The SHCO shall assure that all of his personal equipment, including report and working forms and additional supplies, are available and in good condition.

b. When applicable, he shall assure that special or additional equipment normally available at the Area Office is actually available, calibrated, and ready in every respect for his use.

c. Training in the use of such equipment should normally be accomplished prior to the need. A review or recheck with a highly qualified individual may be appropriate before the inspection.

4. Expert Assistance

a. The Compliance Supervisor shall arrange for the provision of experts, when necessary, for the conduct of an inspection or investigation.

b. These specialists may accompany the SHCO or proceed and conduct their tasks separately before or after the SHCO.

c. The Compliance Supervisor shall assure that the SHCO receives all data, conclusions and recommendations made by the assigned specialists that affect or should be part of the report on the inspection, and the resultant actions. The latter may include:

(1) Type and wording of citation(s).
(2) Abatement action and time for abatement.
(3) Proposed penalties.
(4) Followup inspection schedule and items.
(5) Court actions.
(6) Review Commission proceedings.

d. The type of experts needed will vary between areas and counties, and may include new and unique specialties. The following list will be used as a baseline in developing local lists with additional specialties:

(1) Industrial Hygienists
(2) Electrical
(3) Mining
(4) Chemical
(5) Fire
(6) Construction
(7) Logging and wood products
(8) Explosives

5. Planning

A brief plan for the conduct of the inspection, including probable conditions and questions which may be expected, will improve and expedite the entire inspection. The basis for the plan shall be the SHCO's experience and advice from other Compliance Officers and specialists, and the Safety Standards.

D. Entry of the Establishment

1. Time of Inspection

a. Inspections shall be made during the regular working hours of the establishment, except as special circumstances may require.

b. The Compliance Supervisor's approval of the SHCO inspection schedule shall be obtained prior to entering an establishment at other than day-time working hours, except where obtaining approval would cause undue delay.

2. Refusal to permit Inspection-Warrants

   a. Section 8 of the Act provides that SHCO's may enter without delay and at reasonable times any factory or establishment covered under the Act for the purpose of inspecting with reference to safety and health standards issued under the Act. The SHCO shall tactfully present his credentials to the owner, operator or agent in charge at the establishment and explain generally the nature and purpose of his visit. He should further explain generally the scope of the inspection and the records he wishes to review.

   b. In cases where a SHCO encounters a refusal to permit entry, he should advise his Compliance Supervisor, who will in turn refer the matter to the Bureau Chief and the Bureau Solicitor with a request that an inspection warrant be obtained.

   c. If an employer refuses to permit an inspection, the SHCO should advise the employer that the Act (Section 8(a) provides for an inspection, but he shall not state or imply that the law provides any penalty for refusing permission to inspect. If there is still a refusal to permit inspection, SHCO shall endeavor to ascertain the reason for such refusal. He will leave the premises and shall immediately report the refusal and the reason therefore to the Compliance Supervisor. The CS shall immediately consult with the Bureau Chief and the Bureau Solicitor who shall promptly take appropriate action including compulsory process, if necessary.

   d. In doubtful cases where permission is not clearly given, or where the employer shows hesitation, or absents himself for a period of time, the SHCO should proceed as indicated. He should not engage in argument or discussion concerning refusal, with the exception that he shall inquire briefly as to the reason for refusal, or may answer reasonable questions (e.g., the scope of the inspection and its purpose), but he should avoid any impression of insistence of intimidation concerning his right to inspect.

   e. In cases where entry has been allowed and the employer interferes with or limits an important aspect of the investigation, the SHCO should decide whether to complete the inspection to the extent possible, or to discontinue the inspection and through the Compliance Supervisor alert the Bureau Chief and request the Bureau Solicitor to seek an inspection warrant. For example, if the employer refuses to permit the walkaround or to permit the SHCO to examine records which are essential to the inspection, the inspection should be discontinued and an inspection warrant sought. In other cases where the employer interferes with or limits the inspection, the inspection should be completed and the matter discussed with the Compliance Supervisor as to further appropriate action.

f. In cases where a refusal of entry is to be expected from the past performance of the employer, or where the employer has given some indication prior to the commencement of the investigation of his intention to bar entry or limit or interfere with the investigation, a warrant should be obtained before the inspection is attempted. Cases of this nature should also be referred through the Compliance Supervisor to the appropriate Bureau Solicitor and the Bureau Chief alerted.

g. The Bureau Solicitor's office should be alerted immediately by telephone by the Compliance Supervisor when it becomes necessary to request that a warrant be obtained. Thereafter, within 48 hours after the determination is made by the Compliance Supervisor that a warrant is necessary, the Compliance Supervisor will transmit to the Bureau Solicitor: (1) a written summary of all facts leading to the refusal of entry or limitation on inspection; (2) all previous investigations of the employer; (3) so much of the current inspection report as has been completed; (4) information as to the name and position of the individual or individuals barring entry or limiting inspection; and (5) the names and addresses of any witnesses to the refusal or limitation of the inspection.

h. A warrant is a legal process issued by a District Court Judge, Justice of the Peace, or other Magistrate, which will be directed to the SHCO authorizing the SHCO to conduct an inspection of premises which will be described in the warrant. Under the terms of the warrant, the SHCO will be authorized to conduct an inspection of the described premises at reasonable times during ordinary business hours, and to inspect in a reasonable manner and to a reasonable extent, including the collection of samples, if necessary, an examination of the establishment and all pertinent equipment, finished and unfinished materials, structures, machines, records and all other things therein bearing on occupational safety and health. All questions arising concerning reasonableness of any aspect of an inspection conducted pursuant to a warrant shall be referred to the Solicitor's office.

i. When the SHCO receives a warrant authorizing his inspection of designated premises, he will give the conduct of such an investigation first priority. The inspection will be commenced within 24 hours of receipt of the warrant, and any conflict with this requirement will have to be cleared with the Bureau Solicitor's office. Except in unusual circumstances which are cleared with the Bureau Solicitor's office, there shall be no advance warning to the employer of the fact either that a warrant has been secured or that inspection will take place pursuant to the warrant. The SHCO shall serve a copy of the warrant on the employer, and make a separate notation as to the time and place and the name and capacity of the individual served with a warrant. Each warrant will have a space for return of service entry by the SHCO, which will require that the SHCO enter the exact dates on which inspection was made pursuant to the warrant. As soon as the inspection has been completed, the SHCO will complete this return on the original warrant indicating the dates when inspection was made, sign, and forward that original warrant to the Bureau Solicitor's office. This original warrant must then be filed in court, so care should be taken not to mutilate or incorrectly complete the warrant.

j. In any case when an employer refuses entry even pursuant to a warrant or continues some limitation on the inspection even after warrant has been secured, no force shall be used by the SHCO seeking completion of the inspection. The facts of such refusal or partial refusal shall immediately be reported to the Bureau Solicitor by telephone, and a written memorandum to the Bureau Solicitor through the Compliance Supervisor within 24 hours thereafter. The Bureau Solicitor will then take necessary court action to punish such unlawful resistance to the warrant. The SHCO should make notations as to all witnesses to the refusal or partial refusal, and otherwise fully report all the facts surrounding such refusal.

Forcible Interference with Conduct of Inspection or Other Official Duties

a. Under Section 26 (2)(f), "Any person who kills a person while engaged in or on account of the performance of investigative inspection, or law enforcement provisions of this act, shall, upon conviction, be punished by imprisonment in state prison for a term consistent with the offense under section 94-5-101 through 94-5-105, Homicide, of the Criminal Code."

b. Under Section 26 (2)(d) any person who assaults a division compliance officer, inspector, investigator, or its authorized designee shall, upon conviction, be punished by a fine not exceeding five thousand dollars ($5000) or imprisonment, or both. Section 26 (2)(e) further provides when the assault is with a deadly weapon, upon conviction, may be fined not exceeding ten thousand dollars ($10,000) or by imprisonment, or both.

c. Whenever a division official or employee encounters forcible resistance, opposition, interference, etc., or is assaulted or threatened with assault or the like while engaged in the performance or on account of the performance of his official duties, all investigative activity shall cease and the CS shall be advised by the most expeditious means. In this context, "forcible" is a general term which imports the physical exertion of violence, compulsion, or constraint to any degree. The following examples illustrate the type of forcible conduct which shall be immediately reported to the Compliance Supervisor:

(1) For anyone physically to hold, grab, push, shove, or in any way limit the official's or employee's freedom of acting or choice of action. The threat of any action which limits freedom of action or choice of action would be included.

(2) For anyone to strike, kick, or in any way inflict or attempt to inflict injury, pain, shock on the official or employee. The threat of such actions would be included, as would oral abuse which menaces (or causes concern for) the official's or employee's personal safety.

(3) For anyone to assault or threaten the official or employee with a weapon of any kind. This may also include the menacing handling or display of weapons.

d. Upon receiving a report of such forcible action, the CS shall immediately notify the BC and the Bureau Solicitor.

4. Release for Entry

a. The SHCO shall not sign any form of release or agree to any waiver. This also applies to any employer forms concerned with trade secrets information. If, after the SHCO has pointed out the division's authority under Section 8(a) of the Act, the employer still insists that the SHCO shall execute a release before entering the establishment, the SHCO shall suspend the inspection and report the matter promptly to his Compliance Supervisor.

b. The SHCO may sign a visitor's register, plant pass, or any other book or form used by the establishment to control the entry and movement of persons upon its premises, so long as such signatures do not constitute any form of a release or waiver of presectuion or liability under the Act.

c. In case of any doubt, the SHCO shall consult with the Compliance Supervisor before signing any document other than those specified in the above paragraph.

5. Bankrupt or Out of Business

If a SHCO discovers that the establishment scheduled for inspection has ceased business.and there is no known successor, or that the establishment has been adjudicated bankrupt and the business is to be discontinued, he shall immediately discontinue the investigation and report the facts to his Compliance Supervisor.

6. Strike or Labor Disputes

a. No inspection activities shall be initiated either at the plant or elsewhere while the establishment or plant under consideration is involved in a strike, a labor dispute involving work stoppage, or picketing, without approval of the Compliance Supervisor. Under some circumstances it may be appropriate to make an inspection of such establishment. Therefore, the Compliance Supervisor shall be advised immediately of all such situations involving inspection scheduled on a complaint basis or as a result of information indicating probable violations.

b. In submitting this information to the Supervisor, the SHCO shall give his recommendation as to whether the scheduled inspection should be made or should be delayed until the strike, labor dispute, or picketing is concluded. Such investigations shall be made only on the specific authorization of the Compliance Supervisor.

E. Opening Conference

1. Purpose

At his interview with the employer or his designated representative, the SHCO shall:

a. Inform the employer that the purpose of his visit is to make an investigation to ascertain whether the employer is in compliance with the requirements of the Act.

b. Outline in general terms the scope of the inspection, including records he may desire to review. (See paragraph F.2.c. of this Chapter), employee interviews, physical inspection of the worksite or workplaces, and the closing conference with the employer or his designated representative to discuss the inspection findings.

c. Give the employer copies of laws, standards, regulations, and promotional materials as applicable.

d. Furnish a copy of complaint(s) if appropriate.

e. Inform the employer how he may obtain additional copies of other applicable materials.

f. At an appropriate time during the opening conference, the SHCO should discuss the walkaround provisions under the Act, (See paragraph F.1.d. of this Chapter). The employer should be asked to designate his representative for walkaround purposes. In addition, the SHCO should determine if there is a certified or recognized union or unions in the plant, or any other authorized employee representative and they should be contacted. Where any authorized employee representatives are designated at the beginning of the inspection, the SHCO should discuss with them the scope of the walkaround. To the extent possible, all issues relating to walkaround should be settled at the beginning of the inspection.

2. Report

At the first interview with the employer or the employer's representative, or at an appropriate time during the course of the inspection, the SHCO shall complete the appropriate parts of the MTSH-1 Form.

F. Establishment Inspection

1. Employer and Employee Representatives

a. Section 8(5) of the Act requires that a representative of the employer and a representative authorized by the employees shall be given an opportunity to accompany the SHCO during the physical inspection or any workplace for the purpose of aiding such inspection. Ordinarily, the selection of an employer representative will cause no difficulty. However, the selection of an employee representative will require the exercise of discretion and judgment by the SHCO. The purpose of this provision, the legislative history reveals, is to provide "an appropriate degree of involvement of employees themselves in the physical inspection of their own places of employment" and to give them an opportunity to point out hazardous conditions to the inspector. While this Manual cannot deal with all possible situations, the following guidelines are suggested to aid SHCO's in the exercise of their discretion.

b. If employees are represented by a certified or recognized bargaining representative, the union ordinarily would designate the employee representative. Similarly, if there is a plant safety committee, the employee member of that committee would ordinarily designate the employee representative for walkaround purposes.

c. Generally, the employee representative should be an employee of the establishment being inspected or, at least, of the same employer. However, if, in the judgment of the SHCO, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or a safety engineer) is reasonably necessary to the conduct of an effective and thorough inspection, such third party may accompany the SHCO during the inspection. Final decision will rest with the SHCO. If a nonemployee is selected, he shall be cautioned not to discuss matters pertaining to operations of other employers during the inspection.

d. The following instructions will apply where employees are not represented by a bargaining representative or a safety committee. There may be situations where employees will select their own representative for walkaround purposes, even though there is no union or safety committee in the plant. Such selection may be made only by the employees, not by the employer or the SHCO. The SHCO shall have authority to resolve all disputes as to who are the representatives authorized by the employer and by the employees for walkaround purposes.

e. The SHCO should be particularly careful to avoid injecting himself into labor relations disputes, either between a recognized union and the employer or between two unions competing for bargaining rights. However, if there is a recognized union it would ordinarily designate the authorized representative, even though another union m ay be seeking recognition.

f. In places of employment where groups of employees have different representatives, a different employee representative for various phases of the inspection is acceptable to the extent that the arrangement does not interfere with the inspection. More than one employer representative and employee representative may accompany the SHCO during any phase of the inspection, if the SHCO determines that such additional representatives will further aid the inspection. This situation could arise where there is a craft union and an industrial union representing employees in the same workplace.

g. The Act does not require that there be an employee representation for each inspection. It provides, however, that in such cases, employees will have an opportunity during the inspection to bring hazardous conditions to the attention of the SHCO. Section 8(5) of the Act provides that where there is no authorized employee representative, the SHCO must consult with a reasonable number of employees concerning matters of safety and health in the workplace. Accordingly, in any situation where there is no authorized representative of employees, or where the SHCO is unable to determine with reasonable certainty who is such representative, he should avoid making any determination and instead interview a reasonable number of employees. It should be noted that Section 8(5) of the Act provides only that where there is no representative, interviews are mandatory. It does not preclude interviews of employees during the course of an inspection when accompanied by an employee representative, and such interviews are an essential investigative technique.

h. The SHCO may deny the right of accompaniment to any person whose conduct interferes with a full and orderly inspection. The conduct of inspections, including the walkaround, shall be such as to preclude unreasonable disruption of the operations of the employer's establishment. While some degree of interference may be inevitable, any large-scale disruption of normal operations will hamper the inspection and the SHCO should use his judgment as to whether to suspend the inspection or to take other action. In appropriate cases, the Compliance Supervisor should be consulted. In addition, the employee representative should be advised that during the inspection he should avoid discussing with employees matters unrelating to the inspection.

i. The SHCO must take special measures during inspections when trade secrets or security matters are involved. Upon the request of an employer, any authorized representative of employees in an area containing trade secrets shall be an employee authorized by the employer to enter that area. The SHCO should ascertain whether there is such a representative or employee. Where there is no such representative or employee, the SHCO shall consult with a reasonable number of employees who work in that area concerning matters of safety and health. On trade secrets generally, see Section M of this Chapter. With regard to information classified by an agency of the U. S. Government in the interest of national security, only persons authorized to have access to such information may accompany a SHCO in areas containing such information. (see Chapter IV.)

j. During the opening conference, the SHCO should ascertain from the employer operating the establishment whether the employees of any other employer (i.e., an "outside employer") are working in or on the establishment (for example such contracting employers as maintenance, remodeling and window-washing firms, etc.). If there are such employees, the SHCO should afford an authorized representative of those employees a reasonable opportunity to accompany him during his inspection of the workplaces where they are working. Since a responsible official of the "outside employer" may not be present, unless he was given advance notice in accordance with paragraph B.2.f of this Chapter, he should be contacted as early in the inspection as possible and given a reasonable opportunity to accompany the SHCO during the inspection of his employees' working conditions. The inspection should not be delayed to wait for the employer's or employees' representatives longer than would be reasonably necessary for them to be present.

2. General Instructions

a. The SHCO shall take the time necessary to inspect all aspects of the operations at the establishment being inspected. The time involved may vary from one hour to more than a day, depending upon the size of the establishment and the complexity of its operations.

b. Inspections have as their primary aim the enforcement of standards issued under the Act. However, the SHCO should also ascertain whether the employer whose establishment is being inspected has: (1) posted the notice informing employees of their rights and obligations under the Act; (2) complied with the record keeping requirements under the Act; and (3) given advance notice to authorized representatives of employees, if such notice is required. During followup inspections, the SHCO should ascertain whether the employer has complied with the citation posting requirements.

c. During the course of a routine inspection, the SHCO shall inspect those employer records required to be kept by the Act.

d. The CSHO has the authority to review records required by the Act and regulations, and other records which are directly related to the purpose of the inspection in situations where, for example, (1) the issue is whether a willful or repeated violation exists, or (2) where an attempt is being made to ascertain whether a violation existed before an inspection, such as a catastrophe and/or fatality investigation, or where advance notice has been given and at the time of the inspection the SHCO has reason to believe that alterations have taken place as a result of the advance notice so as to give a misleading impression of the conditions in the workplace. In such situations, any records the SHCO believes would be helpful and directly relevant to the purpose of the inspection may be reviewed.

e. Other records voluntarily provided by the employer can be received by the SHCO and considered by him in evaluation of conditions in the workplace. For example, the employer may want to voluntarily give the SHCO copies of correspondence between the employer and a manufacturer of equipment that the employer has ordered for the purpose of complying with a standard. Such records are not required; however, this type of record may be in the employer's best interest as an aid to the SHCO and the Compliance Supervisor in determining a reasonable time for abatement of a particular violation, if such correspondence contains projected delivery dates, etc.

f. During the inspection, the SHCO shall use discretion in discussing apparent violations with either the employer representative or the employee representative. However, he may be generally responsive to inquiries without indicating his conclusions as to whether a citation will be issued. He may indicate to an employee representative that if a citation results from the inspection, the citation will be mailed within a short period of time. Posting requirements of the Act should be explained. Communications generally should be reserved for the closing conference with the employer and the SHCO should be guided by instructions in the Compliance Operations Manual on this point. (See Section I. of this Chapter.)

g. It will be found that numerous apparent violations such as blocked aisles, unsafe floor surfaces, hazardous projections, unclean toilets, and deficiencies of similar nature, can be corrected immediately. In many instances, the employer representative will voluntarily point out to a foreman the apparent violations detected, so that the foreman may take immediate steps to correct the hazards. In any such situations, the conditions and corrections shall be recorded to help judge good faith, compliance, etc. Although corrected, the apparent violation shall be the basis for a citation or proposed penalty.

h. The SHCO shall take notes necessary to prepare applicable sections of the MTSH-1 Form. Basic information needed is as follows:

   (1) Violation description.
   (2) Serious, other, and de minimis.
   (3) Location in the establishment (post, aisle, floor, department, etc.).
   (4) Number of units (where applicable).
   (5) Diagram where required.
   (6) Interviews with employees (name, title, assignment, or job.)
   (7) Hazards corrected at time of inspection.
   (8) Instrument readings.
   (9) Time of entry.
   (10) Time violation observed.
   (11) The names of any certified or recognized union or other authorized representative of employees affected by a hazard which may be the subject of a citation.
   (12) The number and kinds of employers (e.g., carpenters, machine operators) affected by a hazard which may be the subject of a citation.

i. It is essential that the SHCO record on the Compliance Worksheet MTSH-1A Form, all pertinent facts with respect to apparent violations. Recording mere conclusions without support facts, will not be sufficient. (See instructions in Chapter XII.)

j. If an imminent danger situation is discovered during the inspection, the SHCO should follow the procedure set forth in Chapter IX.

3. General Duty Requirement

During the course of an inspection, the SHCO's primary concern will be determining whether the employer is complying with safety and health standards promulgated under the Act. However, attention should also be directed to whether the employer is complying with the general duty clause in Section 5(1)(a) of the Act, which applies to every workplace. That clause provides that each employer "shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees." For specific guidelines as to use of the general duty clause in inspections, see Chapter VIII.

4. Employee Interviews in Inspections

a. In accordance with the Act any employee shall be afforded an opportunity to bring any condition which he believes violates a standard or the general duty requirement to the attention of the SHCO during an inspection. This objective is accomplished mainly by means of the employee walkaround provision. (See paragraph F. 1 of this Chapter.) However, the walkaround provision does not prevent the SHCO from consulting with any employee who desires to discuss a possible violation, if the SHCO feels that such consultation will not interfere with the conduct of the inspection. Upon receipt of such a communication from an employee alleging a violation, the SHCO shall inspect for the alleged violation and record any findings as a result of his investigation on the MTSH-1 Form.

b. In certain circumstances, the SHCO may want to talk to a particular employee who was not a part of the walkaround for the purpose of obtaining more information regarding an accident or a possible violation. In such situation, the objectives of an employee interview will be attained only if the SHCO prepares for and conducts the interview in such a manner that the pertinent facts will be elicited. The information derived from the interview will depend in part on the attitude of the employee being interviewed, which may be influenced by the way he is received. The SHCO shall inform the employees that all information given is confidential.

c. Interviews are conducted for a definite investigative purpose and require careful planning and skill in selection. Former employees should not be interviewed unless it is essential to determine the current status of compliance important to a possible litigation case. Once the SHCO has decided that the investigation purpose of employee interviews has been achieved, further interviews are unnecessary. The key is to reach an early decision as to the "cut-off" point and to act on it.

d. Interview time and place

(1) Interviews may be conducted at any time during an inspection. With respect to interviews in retail or service establishments, or in continuous production operation, (e.g., assembly lines), it is particularly important that each interview be scheduled at a time and under circumstances which will result in the minimum interference with the employee's duties and with the employer's business operations. For example, an employee shall not be interviewed during a peak period when he must be "on-the-job" without interruption to perform assembly-line work, make sales, or serve his employer's customers. During retail business hours, an employee shall not be interviewed on the selling floor or in any part of the establishment normally used by the public. If an employee requests such consultation at a time that would unduly hinder the production or work cycle of the employer's operation, the

SHCO shall consult with the employee during "break", meal time, or after working hours as appropriate. If conditions consistent with these instructions cannot be arranged, the interview shall be obtained away from the establishment.

(2) Interviews away from the establishment may be held in the employee's home, at the Compliance Supervisor's office, or may be arrangad at any other suitable place in the community, such as a post office building, provided conditions or privacy can be maintained. State Employment Security Agency offices shall not be used.

(3) SHCO's shall not call on employees at home at very early or late hours; calls on holiday, Sundays, or other days of religious observances shall be avoided. Good judgment is the keynote to when home interviews are to be conducted.

e. Privacy of interview.

Under the Act the SHCO has a right privately to question the employer, owner, operator, agent or employee. While a request by an employee for a private interview would normally be honored, the SHCO has discretion in the matter and he may reject the request if in his judgment a private interview would not be appropriate.

f. Recording employee interview statements.

(1) Written interview statements shall be sought only where some necessary purpose will be served.

(2) Some of the situations in which a signed statement should be taken are:

(a) Where there is an actual or potential controversy with the employer as to a material fact concerning a violation which the employee has information of.

(b) Where there is a material conflict in difference in the statements of employees as to the facts of a particular situation.

(c) Where the CS, BC, and Bureau Solicitor have determined that an investigation should be made to determine whether a violation is willful or repeated. (See Chapter VIII.)

(d) In accident investigation where an attempt is made to determine whether violation(s) existed at the time of an accident. (See Chapter VI.)

(e) Where advance notice has been given and the SHCO has reason to believe that a biolation would have existed at the time of inspection if advance notice has not been given.

(3) Signed interview statements shall be written in the first person and in the language of the employee. The wording of the statement he is being asked to sign must be understandable to the employee and reflect only what has been brought out as fact in the interview. Any changes or corrections shall be initialed by the employee. Otherwise, the statement shall not be changed, added to, or altered in any way. Signed statements shall end with wording such as: "I have read the above and it is true." After the employee has signed the statement, the SHCO shall sign it as a witness.

G. Receiving Complaints During Inspection

1. A full discussion of the complaint provisions of the Act appears in Chapter VI and should be read in connection with this subsection.

2. If, during an inspection, the SHCO receives a complaint meeting the formal requirements set forth in Chapter VI, paragraph A.2., he would normally inspect for the violation alleged during that inspection. If he has any questions as to whether an inspection should be conducted he should contact the Compliance Supervisor. Before he conducts the inspection concerning the particular hazard a copy of the complaint should be given to the employer. (It may be necessary to make a copy of the complaint for this purpose.) Upon request, the name of the complainant should not be shown to the employer or otherwise published, released or made available. The procedures in (Chapter VI, paragraph A.4) should be followed.

3. An employee may bring a hazard to the attention of the SHCO in a manner not meeting the formal requirements referred to above. Such a complaint may be oral, unsigned, or not set forth in the violation with sufficient particularity. In such circumstances, the SHCO should advise the employee of the additional rights to be gained if he submits a complaint meeting the formal requirements. The SHCO should offer a copy of the MTSH-1 Form, and if necessary, assist the employee in filling out the form.

4. Even though no formal complaint is filed, the SHCO should normally inspect for the hazardous condition alleged. However, none of the procedures for formal complaints in Chapter VI need be followed in such a situation. Citations may, of course, be issued as to such hazards, if violations exist.

5. If on the basis of the SHCO's evaluation of any complaint, whether or not formally valid, it appears that an imminent danger situation may be involved, he should immediately inspect regarding that situation. (See Chapter IX regarding imminent dangers).

H. Inspection Techniques

1. Photography

a. The use of photography during inspections and investigations can serve as a valuable method of recording violations or conditions that may change during the investigation or shortly thereafter. Photography can also aid in writing reports and in analyzing conditions for which no standards have been issued. In alleged imminent danger and accident investigations, photographs should be taken, where appropriate, unless such action would be hazardous. In all cases, the SHCO shall take reasonable precautions to assure that taking photographs with flash or spark-producing equipment will not be hazardous.

b. Procedures

(1) The SHCO shall notify the employer that photographs may be taken during the inspection. In areas where confidentiality of trade secrets is involved, procedures, contained in Section M of this Chapter shall be followed.

(2) If the employer objects to the taking of any photographs which the SHCO believes is essential to the inspection, the SHCO should advise the employer that the regulations specifically authorize the taking or obtaining of photographs related to the purpose of the inspection. Additionally, if the employer's objection is based on his fear that trade secrets may be disclosed, the SHCO should advise him of the protections against such disclosure afforded by the Act (Section 15), and this Manual (Chapter V, Section M). Specifically, the employer should be advised, in such cases, that all negatives and prints of photographs taken in an area which contains or which might reveal a trade secret shall be labeled "confidential--trade secret" and shall not be disclosed. If the employer still objects to the taking of photographs, the inspection should be completed to the maximum extent possible without such photographs.

(3) The SHCO should then advise his Compliance Supervisor and together, they should determine whether the photograph in question is essential to the completion of the inspection. If the photograph is deemed essential, the Compliance Supervisor should refer the matter to the appropriate Bureau

Solicitor with the request that a warrant be obtained. (See paragraph D.2 of this Chapter.)

(4) If the inspection is jointly conducted with an Industrial Hygienist, they should both confer on what photo coverage is required.

(5) Photographs shall be identified, and the following information written, on the back of or attached to each picture:

   (a) MTSH-1 Form Number. Area Number, Region Number.

   (b) Employer's name and address.

   (c) Location within plant, facility or site.

   (d) Date (month, day and year).

   (e) Time of day.

   (f) Location of photographer (looking toward, etc.).

   (g) Brief description of what photograph is trying to identify. Include whether it involves complaint, accident or routine inspection.

   (h) Compliance Officer and/or Industrial Hygienist signatures.

   (i) The original photographs and negatives, if available, shall be kept in the investigation file. If additional copies are desired, consult the Compliance Supervisor.

(6) If the photographs might reveal a trade secret, all negatives and prints should be labeled "confidential--trade secret".

(7) Black and white photographs should be used unless color will aid in determining whether a violation exists or in proving the existence of the violation.

2. Industrial Hygiene Inspections

a. General guidelines establishing the relationship between SHCO and the Industrial Hygienist are contained in Chapter XIII. That chapter also delineates the industrial hygiene program that will be implemented in conjunction with the inspection program, as the need arises.

b. The SHCO will generally use direct reading instruments when inspecting industrial hygiene conditions. The SHCO shall have completed the required training in the use of these instruments prior to using them during an inspection.

c. If an inspection indicates the need for an in-depth industrial hygiene analysis, the SHCO shall note this on the MTSH-1A and 1C Forms. The Compliance Supervisor shall be notified at the conclusion of the inspection and he will assign a qualified Industrial Hygienist to investigate. The citation for an alleged health violation shall be held in abeyance until further study confirms the SHCO findings. This shall in no way delay the processing of citations and proposed penalties for all other alleged violations noted by the SHCO during the establishment inspection. A separate citation and notification of proposed penalty will be prepared by the Industrial Hygienist, in consultation with the Compliance Supervisor for the alleged health violation when and if substantive analysis indicates that a violation exists.

d. In cases of imminent danger, follow the procedures contained in Chapter IX.

3. Safety and Health Rules, Practices, Clothing and Equipment

The SHCO shall comply with all employer safety and health rules and practices at the establishment, and he shall wear or use at least the safety clothing or equipment required by the employer for his own employees. Eye protection shall be worn at all times when there is any chance of being subject to eye injuries. Hard hats, safety shoes, safety glasses, ear protection, etc., should be worn where necessary. Consult the Compliance Supervisor for any other personal protective equipment necessary for specific hazardous work areas, such as rubber boots, coveralls, gloves, tinted lens, safety glasses, etc., before going to the inspection site.

I. Closing Conference-Employer

1. General

Upon completion of an inspection, the SHCO shall confer with the owner, operator, or employer representative, and advise him of all conditions and practices disclosed by the inspection which may constitute safety or health violations. He should also indicate, where possible, the applicable section or sections of the standards which may have been violated. Copies of the applicable standards will be left with the employer at the conclusion of the conference.

2. Discussing Citations and Penalties

a. The SHCO shall advise the employer that citations may be issued with respect to some or all of the conditions or practices noted, and that monetary penalties may be proposed with respect to each citation. The employer should also be informed that citations will fix a reasonable time for abatement of the alleged violation(s). It should be explained to the employer that if a citation(s) is issued, he will receive shortly thereafter a notification of proposed penalty(ies), or a notification that no penalty is to be proposed, and that appeal procedures will be fully explained in any citation or penalty notice.

b. While the SHCO should encourage employers to eliminate any and all hazards as promptly as possible, he shall not at any time commit the Department, or give any impression of committing the Department, as to what enforcement action will be taken with respect to any apparent violation disclosed by the inspection. Thus, the SHCO shall make no statement which could be construed as committing the Department to issuing or not issuing a citation with respect to an apparent violation. Nor shall the SHCO make any statement which might appear to commit the Department with respect to such matters as the nature or category of any apparent violation for which a citation may be issued, the length of the period which will be fixed for abatement or the amount of any penalty which may be proposed. However, the SHCO should inquire as to the employer's estimates as to the extent and cost of any corrective measures, the employer's estimates of the period required for abatement, and note any extenuating circumstances suggested by the employer. The employer's comments on these matters shall be summarized on the MTSH-1C Form.

c. Where the SHCO has found a hazardous condition which (1) is not covered by a standard and does not constitute a violation of the general duty clause (for example, not a recognized hazard), or (2) involves a non-yet=effective standard, the SHCO should bring this to the employer's attention and indicate that as of that date, a citation may be issued if the condition is not abated. In such cases, the SHCO should note specifically on the MTSH-1c that such conditions were brought to the employer's attention. Under no circumstances should a de minimis notice be issued.

J. Closing Discussion with Employees, If Requested

Generally, there will be no closing conference with the employees or their representative, since they will have communicated and participated with the SHCO during the inspection. However, if requested by the employees or their representatives, a generally responsive discussion will be held.

K. Expedited Citation Procedure

1. Occasions and Conditions

The SHCO may complete certain citations as soon as possible after an inspection in a situation where all of the following conditions exist:

a. The SHCO cannot report back to his Area Office at the end of the day of inspection.

b. If a citation were issued at a later date, the employer's worksite would likely have moved its location (e.g., construction site) before a followup inspection could be conducted to determine whether abatement has been accomplished. Stated another way, where, in order for the time for abatement to end before the employer's worksite changes location, the reasonable time allowed for abatement of alleged violations must begin to run at the time of the inspection, rather than at the nromal, later time when the Compliance Supervisor and SHCO would write the citations.

c. The violations are "serious" or would have been "serious" but for the fact that the employer did not and could not with the exercise of reasonable diligence know of the existence of the violation.

2. Procedure

a. The SHCO shall first contact the Compliance Supervisor by telephone for approval to issue an expedited citation.

b. Such citations should be completed in the SHCO's temporary quarters, or in some other suitable place, as soon as possible after consultation with the Compliance Supervisor. The SHCO shall sign all such citations in the Compliance Supervisor's name, and he shall sign his own name immediately below. The above procedure shall normally be utilized only where the abatement period does not exceed five working days. In all other cases, the SHCO shall report back to the Area Office and citations shall be issued in accordance with normal procedures.

L. Discussion of Abatement Periods

For instructions on determination of abatement periods, see Chapter X.

M. Confidentiality of Trade Secrets

1. It is absolutely essential to the effective enforcement of the Act that the SHCO and all concerned officers and personnel preserve the confidentiality of all information, data, and processes obtained during inspections and investigations which might reveal a trade secret.

2. A trade secret is any confidential formula, pattern, device or compliation of information which is used in the employer's business and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It is known only to the employer and those employees to whom it is necessary to confide it.

3. Matters of public or general knowledge in the industry are not trade secrets. A trade secret may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device; a plan or blueprint; or a list of customers. The following examples have been held by the courts to be trade secrets: the internal configuration of operating parts of a machine which is novel in design and unique in its field; a chemical company's unique process for manufacturing a stabilizer-emulsifier product; a strip-type blower wheel manufacturer's prints and drawings showing complete details of the wheel, including angles, tolerances, dimensions, etc., a garbage-compression mechanism enabling the employer's trucks to carry substantially larger loads; and specifications and processes for achieving a high degree of accuracy and fine technical finish on dials and panels.

4. Under Section 15 of the Act, all information reported to or obtained by a SHCO in connection with any inspection or other activity under the Act which contains or which might reveal a trade secret shall be kept confidential. However, Section 15 provides that such information may be disclosed to other Federal Officers or employees concerned with the enforcement of the Act, or when relevant, in any proceeding under the Act.

5. Reserved.

6. At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the SHCO has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs, and environmental samples, shall be labeled "confidential--trade secret" and shall not be disclosed except in accordance with the provision of Section 15 of the Act.

7. With respect to authorized representatives of employees accompanying SHCO's in areas containing trade secrets, see Paragraph F.1.i. of this Chapter.

N. Post Inspection Procedures (Reserved)

O. Followup Inspections

1. Policy

Strict adherence to the policy set forth in this Section respecting followup inspections is essential in order to protect the safety and health of employees and to make it clear to employers that abatement requirements in citations will be strictly enforced.

2. Scheduling

a. Followup inspections are mandatory in the following situations:

(1) Where the court has issued a restraining order in an imminent danger situation;

(2) Where citations for serious, willful or repeated violations have been issued.

b. In the case of citations for nonserious violations, the Compliance Supervisor has discretion as to the scheduling of a followup inspection. Where citations for both serious (or willful or repeated) and nonserious violations are issued, the followup inspection should include all violations cited.

c. If a citation contains staggered abatement dates for serious violations, a followup should be scheduled for the earliest abatement date. For example, if the employer is required to provide protective equipment within 24 hours and to institute feasible engineering controls within 90 days, the followup inspection should follow as promptly as possible the 24-hour period. Additional followup for later abatement dates should also be scheduled. Where the employer has been cited for a number of violations with varying abatement dates, the Area Director will use his discretion in scheduling followup inspections respecting all violations.

d. If a notice of contest is filed by an employer respecting an alleged violation, no followup should be scheduled as to that violation. This rule is not applicable where the only notice of contest is filed by employees or their representatives. However, if the abatement date is shorter than the 15 working day period for the filing of a notice of contest, a followup inspection should be scheduled after the abatement date, if a notice of contest has not been filed by that time. If a notice of contest is thereafter filed in a timely manner, notice of failure to abate and proposed penalties should not be issued, and if any were issued, they would be nullified.

e. After a Commission decision affirming a citation, the employer is required to abate the hazard in accordance with the order of the Commission. Followup inspections should be conducted after the abatement date, if no stay is issued by a court. In these circumstances, it would be advisable to consult with the Office of the Solicitor before scheduling the followup.

3. Conduct of Followup Inspection

a. The primary purpose of the followup inspection is to determine if the hazard has been abated. In addition, the SHCO should determine if citations have been posted in accordance with the requirements of the Act.

b. In general, additional inspection activity should be minimal. However, if in the judgment of the SHCO there have been significant changes in the workplace further inspection action may be appropriate.

c. In a followup inspection, all of the instructions for inspection activity in this chapter will be applicable, including opening conference, walkaround, and closing conference.

d. If the alleged violation(s) noted in the citation have been abated in a satisfactory manner, the SHCO, in consultation with the Compliance Supervisor, will mark the file respecting that citation closed. On the other hand, if the employer has not abated the alleged violations, a notice of failure to abate and proposed additional penalties are appropriate. Difficult issues as to what constitute abatement may arise and notices as to failure to abate in such situations should be issued only in consultation with the Compliance Supervisor and the Bureau Solicitor.

4. Reports

a. In submitting an MTSH-1 Form to cover the followup, it is not necessary to complete all items on the form. Certain items may be omitted if there have been no major changes from the original inspection and an original report has been filed within 6 months. Items involving major changes should be covered in the followup report.

b. The followup MTSH-1 Form should refer to the Identification Block of the original report. Inspection summary information should be used for new violations as observed and cited. (See Chapter XII.)

5. Closeout (Reserved)

CHAPTER VI--COMPLAINTS, DISCRIMINATION, CATASTROPHE AND/OR FATALITY INVESTIGATIONS AND OTHER SPECIAL SITUATIONS

A. Complaints

1. The discussion of complaints in this Chapter is confined to the situation where a complaint is received at the Compliance Supervisor's office before an inspection, rather than the situation where it is given to the SHCO at the time of inspection of an establishment. For discussion of the latter situation, see Chapter V.

2. The Formality Requirements of the Montana Occupational Safety and Health Act of 1973 Section 8(6).

   Section 8(6) of the MOSHA 1973 sets forth the formality requirements for a complaint under the Act. The complaint must:

   a. Be reduced to writing (either on MTSH-7 Form or in a letter);

   b. Allege that a violation of the Act exists in the workplace;

   c. Set forth with reasonable particularity the grounds upon which it is based. This does not mean that the complaint must specify a particular standard; it need only specify a condition or practice that is hazardous, and if uncommon, why it is hazaradous; and

   d. Be signed by one or more employees or their representatives.

      (1) For purposes of submitting a complaint, an "employee" would normally be a present employee of the employer whose establishment is being complained about. However, in some circumstances it may be a former employee; for example, where the employee may have been discriminatorily discharged for a complaint about unsafe or unhealthful conditions in the workplace. Further, an employee may file a complaint as to working conditions of another employer if such employee is working at or near such other employer's workplace and is exposed to hazards of that workplace.

      (2) For purposes of submitting a complaint, a representative of employees may be:

         (a) Any authorized representative of the employee bargaining unit, such as a certified or recognized labor organization;

         (b) An attorney acting for an employee;

         (c) Any other person acting in a representative capacity; for example, a member of the employee's family. In this situation, a complainant purporting to act as a representative of an employee will be presumed to be so acting unless the SHCO has specific information that the complaint was not submitted with the knowledge of or on behalf of the employee.

3. Procedures for Handling Complaints Not Meeting Formality Requirements of Section 8(6) of the Act.

a. Oral communication in person or by telephone.

When an OSH office receives an oral complaint in person or by telephone, the complainant should be advised that if he wants the CS to consider scheduling an inspection of the establishment and if he wants the additional rights noted above, he should submit a formal complaint in accordance with Section 8(6) MOSHA. He should be advised that this may be accomplished by filling in the MTSH-7 Form. (See instructions for MTSH-7 Form in Chapter XII.) If he wants to file a complaint he should be given two copies of the MTSH-7 Form with instructions.

b. Written complaint not meeting the formal requirements of Section 8(6).

When an OSH office receives a signed written complaint that does not meet the formal requirements (for example, it does not state with reasonable particularity the nature of the violation.) The CS should notify the complainant of such fact in writing, also informing the complainant that a new complaint will be considered if the complaint meets these requirements. The complainant should be informed as to what parts of the formality requirements were not met. However, if it appears that the formality requirements can be met by informally advising the complainant of the formal defects of his complaint, that procedure should be followed. The complainant should then resubmit his complaint for consideration. If a complaint contains the complainant's name but not his address and telephone number, an attempt should be made to obtain the information necessary to contact him.

c. Complaints from persons other than employees or their representatives.

Complaints from persons who are not employees or employee representatives, such as complaints by an employer under inspection against his competitors, do not constitute valid complaints under the criteria set forth in the regulations and in this Chapter. The complainant should be sent an acknowledgement that the complaint cannot be given consideration for this reason.

d. Imminent danger complaints not meeting formality requirements of Section 8(6).

If, on the basis of evaluation of a complaint, it appears that an imminent danger situation may be involved, an inspection should be conducted immediately without regard to whether the complaint meets the formality requirements for a valid complaint. The MTSH-7 Form contains a spece to indicate whether an imminent danger situation is involved; however, the SHCO plainly should not rely on this notation alone as a basis for determining whether there may be an imminent danger situation. (See Chapter IX for instructions pertaining to imminent danger situations.)

4. Procedures for Handling Complaints Meeting Formality Requirements of Section 8(6) MOSHA 1973.

a. The complaint should be evaluated to determine whether there are reasonable grounds to believe that the violation or danger complained of exists. In most cases, the submission of a properly completed complaint should be sufficient for evaluation purposes. The SHCO may, if necessary, call or contact the complainant and obtain details of the alleged violation or danger to the fullest extent possible; in some cases, it may be desirable to meet with the complainant in person. If the complainant is contacted, he shall not be told when the inspection will take place, if at all. The employer should not be contacted at this time.

b. If the Compliance Supervisor determines that an inspection is not warranted because there are no reasonable grounds for believing that the violation or danger exists, he shall notify the complainant in writing of that determination. Such notification shall state briefly the reasons for the Compliance Supervisor's determination. The complainant should at the same time be notified of his right to informal review of such determination and the procedure for obtaining such review, as contained in Section Bureau in the rules of procedure.

c. If it is determined that there are reasonable grounds for believing that the violation or danger exists, an inspection shall be scheduled as soon as practicable. (See discussion of inspection priorities, Chapter IV.)

d. The inspection should be conducted in accordance with the provisions of Chapter V.

e. Normally, if time and resources permit, the inspection should cover not only violations and dangers alleged in the complaint, but the entire establishment of the employer. If time and resources do not permit, the inspection should be limited to the subject matter of the complaint (for example, if a very large establishment is involved and a complete inspection sould take several weeks). However, if, in such cases, the SHCO has reason to believe that similar conditions exist in areas of an establishment other than those areas initially brought to his attention in the complaint, he shall broaden the inspection to include such areas. In each case, the SHCO shall advise the employer of any increase in scope of the inspection at the opening conference or at the earliest possible opportunity.

f. At the opening conference with the employer, a copy of the complaint should be given to the employer. Section 8(6)(a) of the Act requires that if the complainant so requests, his name shall be deleted from the copy provided the employer.

g. In an inspection based on a complaint, the walkaround rights of a representative of the employer and representative of the employees shall be applicable in accordance with the procedure in Chapter V. The complainant will not necessarily be the employee representative for walkaround purposes.

h. If, after an inspection based on a complaint, a citation(s) or notice of de minimis violation(s) is issued convering a violation or danger set forth in the complaint, a copy of the citation(s) or notice of de minimis violation(s) should be sent to the complainant at the same time it is sent to the employer.

i. If, after an inspection based on a complaint, the CS determines that a citation is not warranted with respect to a danger or violation whose existence was alleged in the complaint, the CS is to inform the complainant in writing of such determination by letter. At the same time, the complainant should be notified of his rights of review of such determination and the procedure for obtaining such review, which are also set forth in Section 8(6)(a) of the regulations.

j. Written communications to a complainant shall be sent only to the employee's home address, unless he has specifically requested that mail be sent to him at his place of employment.

B. Discharge or Discrimination

If an employee files a written complaint alleging that he has been discharged or discriminated against because he has filed a complaint, or has instituted or caused to be instituted an action under the Act, or has testified or is about to testify in an action, or as a result of any other activity in connection with the enforcement of the Act, the matter should immediately be referred to the Bureau Chief who will consult with the Bureau Solicitor for a determination as to whether investigation should be undertaken and whether legal proceedings should be instituted under Section 11(3)(a)(b) of the Act. OSH field staff should cooperate with the Bureau Solicitor in any investigation or enforcement proceedings related to such complaints.

C. Catastrophe and/or Fatality Investigation

1. General

a. This section sets forth guidelines for investigating catastrophic or fatal accidents.

b. All investigations of catastrophes and/or fatalities will be conducted using the same inspection procedures contained in Chapter V as well as the additional guidelines provided in this section.

c. The CS' s shall make every effort to stay within the programing guidelines set forth in Chapter IV. The CS and the BC shall determine which accidents will be investigated. The SHCO shall not begin any accident investigation until directed to do so by the CS.

d. Some investigations may require a team effort composed of experts in specific disciplines. The Compliance Supervisor will coordinate with the Bureau Chief and advise the SHCO accordingly.

e. The MTSH-4, Accident-Injury Investigation Report will be used whenever a Safety and Health Compliance Officer investigates an accident. These forms will then be attached to the MTSH-1 Field Report, for the employer for which the accident was investigated. Instructions for completing the MTSH-1, and 4, Forms are contained in Chapter XII.

f. If time and resources permit, the CS may determine that a complete inspection of the establishment be made in addition to the investigation. Depending on the circumstances surrounding the accident, it may be necessary to conduct the inspection before, concurrent, or after the accident investigation. Other areas or operations in the establishment may have similar circumstances to those that caused the accident and should be brought under control immediately.

g. The following are examples of events that will be investigated if time and resources permit:

(1) Accidents involving previous complaints alleging imminent danger or serious conditions.

(2) Fatalities involving possible willful or repeated violations, or refusal to abate cited violations.

(3) Occurrences involving fatalities and/or injuries causing numerous employees to be hospitalized.

(4) Extensive property damage accidents if there is a reasonable probability that one or more fatalities or serious injuries could have occurred had employees been at their workplace.

2. Preinvestigation Activities

a. Immediately upon the receipt of knowledge of a catastrophe and/or fatality considered subject to an OSH investigation the BC, CS, or SHCO as appropriate shall report the event to the CS or BC.

b. If an investigation team effort composed of experts in specific disciplines is required, the CS shall advise the BC and coordinate the activities of the team and the SHCO accordingly. The BC will determine representation on the team and direct the investigation or delegate one of the members as his authorized representative. The team as directed by the BC or his designated representative, will proceed promptly to the scene and will function as a unit in all phases of the investigation until officially directed to return to their normal functions.

c. If the BC and CS determine that an investigation team effort is not required, a SHCO with expertise in the particular condition which caused the accident, shall be selected and dispatched to the establishment involved as soon as possible.

d. If another Federal or State agency or organization is responsible for, or participating in the investigation, the BC and CS shall assure that the SHCO and the team members are fully instructed in the relationship and the areas of cognizance.

e. Prior to leaving for the accident scene the team or SHCO as applicable, shall select the test equipment, protective clothing, camera, and other safety equipment necessary to support the investigation. (See Chapter V. Section C.)

3. Investigation Procedures

a. Advance notice.

(1) The same general policies applicable to advance notice contained in Chapter V, Section B, are applicable to investigation of catastrophes and/or fatalities.

(2) Advance notice shall be given after consultation with the CS if it will aid in the effective conduct of the investigation.

b. Entry of the establishment.

See Chapter V, Section D.

c. Opening conference.

See Chapter V, Section E.

d. Establishment inspection.

(1) Inspection of the complete establishment shall be conducted if the CS determines that it is warranted. If in the course of the investigation the SHCO determines that conditions are such that a complete inspection of the establishment should be made contrary to the CS's direction, the SHCO shall contact the CS by phone and explain the situation. The CS may redirect the SHCO as appropriate.

(2) General procedures for inspection are applicable in an accident investigation. (See Chapter V, Section F). Additional investigation guidelines are contained in the following paragraphs.

(3) The MTSH-4 Form will be used whenever a team or a SHCO investigates a catastrophe and/or fatality occurrence. This Form will then be attached to the MTSH-1 Form, Field Report, for the employer for which the accident was investigated. (See instructions for completing the MTSH-1 and MTSH-4 Forms in Chapter XII.)

(4) Section 26(2)(a) of the Act provides criminal penalties for an employer who is convicted of having willfully violated the Act and that violation causes the death of any employee. In an investigation of this type, therefore, the nature of the evidence available is of paramount importance. There should be close liaison between the SHCO, the Compliance Supervisor, the Bureau Chief and the Bureau Solicitor's office in any proceeding which might involve a violation of Section 26(2)(a).

(5) Conduct of interviews shall be accomplished as set forth in Chapter V, Section F.

e. Reviewing complaints during an investigation.

See Chapter V, Section G.

f. Inspection techniques.

See Chapter V, Section H.

g. Closing conference.

See Chapter V, Section I.

4. Responsibilities

a. Headquarters Office.

(1) The Headquarters Office shall keep current and make available to the field a list of safety engineers and industrial hygienists. The investigator's area of expertise shall be included.

b. Bureau Chief.

(1) The BC or his designee shall have the prime responsibility to direct the investigation for the Bureau of Safety and Health when a catastrophe occurs.

(2) The BC may elect to solicit expertise from other State offices. These requirements shall be coordinated with the Headquarters Office and the affected State's Bureau Chief.

c. Compliance Supervisor and SHCO.

The CS, after consultation with the BC, shall determine which occurrence will be investigated. The SHCO shall not commence any investigation of a catastrophe or fatality without checking with the CS except for very unusual circumstances; e.g., lack of available communications facilities due to a disaster, or critical "on the scene" events and conditions which are being removed or destroyed to prevent further danger, hazard, or reoccurrence.

5. Disclosure and Publicity

See Chapter XXIV.

D. Other Special Situations (Reserved)

CHAPTER VII--CONSTRUCTION, MARITIME, AND AGRICULTURE

A. Construction

1. General SHCO Responsibilities

Refer to Chapter V. Section A.

2. Applicability of Standards

The standards issued under the Construction Safety Act and published as 29 CFR Part 1518 have been adopted as occupational safety and health standards under Section 6(1) of MOSHA. They shall apply to every employment and place of employment of every employee engaged in construction work, including noncontract construction work. The term "construction work" means work for construction, alteration, and/or repair, including painting and decorating. These terms are discussed in the standards. If any question arises as to whether an activity is deemed to be construction for purposes of the Act, the Bureau Solicitor should be consulted. For instructions on writing citations for violations of the construction safety standards, see Chapter X. For instructions as to issuing citation s based on violations of general (i.e., "horizontal") standards, see Chapter VIII, Section A.1.

3. Enforcement of Standards

a. In the event of violations, enforcement procedures shall be brought under MOSHA in accordance with procedures set forth in this section and Chapter XII. This includes special procedures for cases of imminent danger.

b. Violations not specifically included in the Standards shall be written under Section (1)(a) of the Act, in accordance with requirements for general duty clause citations set forth in Chapter V, and Chapter VIII.

4. Definition of Employer Workplace

Inspections of employers in the construction industry are not easily separable into distinct establishments. The establishment would normally be the site at the construction job, e.g., the building site, the dam site. Where the construction site extends over a large geographical area (e.g., road building) the entire job will be considered a single establishment. In cases when such large geographical areas overlap between Area Offices, generally only operations of the employer within the jurisdiction of an Area office will be deemed to be a single establishment of the employer.

When a construction "establishment" as defined herein extends beyond a single Area Office and the SHCO wants to extend the investigation beyond his area bound office, the Bureau Chief may so approve at the recommendation of the Compliance Supervisor.

5. Inspection Priorities

   a. General inspection priority procedures outlined in Chapter IV shall be followed. That section shall be supplemented by guidelines in the following paragraph.

   b. Sites for inspection shall be selected so as to include range of construction jobs, e.g., heavy and light building construction, highways, bridges, dams, airports, docks and piers, and alteration and repair work. Additionally, sites shall be selected so as to include all phases of construction activity, including land clearing, excavation, foundation work, formwork, plumbing, electrical work, etc. Both union and nonunion jobs, performed by a representative cross-section of "prime" or general contractors, should be scheduled for inspection.

6. Coordination With Other Agencies

Some Federal agencies conduct occupational safety and health inspections of construction sites. Among these are the Army Corps of Engineers, the Bureau of Reclamation, General Services Administration, Atomic Energy Commission, the U. S. Postal Service, and others. The WCD has jurisdiction under the Act to conduct state inspections of these sites. If catastrophes or accidents causing fatalities occur involving agency sites, or if complaints are received, the inspection shall be conducted in accordance with the procedures in this Manual.

7. Advance Notice

   a. The same general policies and procedures on advance notice set forth in Chapter V, Section B, are applicable to construction inspections. Thus, in general, advance notice will be given where it will enhance the effectiveness of the inspection. Because of the nature of the industry, particularly the fact that a large number of employers are involved at a single construction site, in many circumstances a judgment should be made that the inspection would commence more expeditiously if employers and unions knew of the inspection ahead of time. However, advance notice may not be appropriate where no inspection is planned ahead of time and the SHCO covers all construction sites in a particular geographic area.

b. When advance notice is authorized, the SHCO shall contact the general contractor's office by telephone. If there is more than one general contractor (e.g., if two or more general contractor's have formed a joint venture for purposes of the job in question), the SHCO shall attempt to ascertain the identity of all such general contractors and contact each of them. The general contractor(s) shall be told to advise all subcontractors working on the job that the inspection will take place. The general contractor shall also be asked to advise the labor organizations representing his employees of the inspection, and to instruct each subcontractor to take similar action. Where there is no labor organizations or other representative of employees, advance notice need not be given to the employees.

8. Inspection Preparation

Refer to Chapter V, Section C.

9. Entry of the Worksite

a. Time of inspection. (See Chapter V, Section D.)

b. Severe weather conditions.

If severe weather conditions encountered during an inspection cause construction activities to shut down, the inspection shall be continued when weather permits. If the work continues and the weather creates hazardous working conditions, these facts shall be reported, since they may be the subject of citations and proposed penalties based on a specific standard or, if no such standard is applicable, the general duty clause. (See Chapter V, Section F, for a discussion of the general duty requirement.)

c. Right to enter--refusal to permit inspection.

(1) Refer to Chapter V, Section D.

(2) If the construction is being performed under contract to the Federal Government, the SHCO shall inform the employer that the right to enter is provided by the MOSHA.

d. Release for entry. (See Chapter V, Section D.)

e. Bankrupt or out of business. (See Chapter V, Section D.)

f. Strike or labor dispute. (See Chapter V, Section D.)

g. Opening Conference.

(1) Refer to Chapter V, Section E.

(2) When he arrives at the construction site, the SHCO shall contact the "prime" or general contractor's representative in charge of the job; usually, this will be the superintendent or project manager. The SHCO shall advise this individual that the purpose of his visit is to make an inspection to determine compliance with the requirements of the Act. Normally, there will be several subcontractors at the site. In such cases, the individual in charge shall be asked to identify them and to provide the name of the individual in charge of each subcontractor's operations at the site. This person shall also be requested to immediately notify such individuals of the inspection and to ask them to assemble in the general contractor's office or some other suitable place in order to discuss the inspection with the SHCO. The inspection shall not be postponed or substantially delayed because of the unavailability of one (or more) subcontractor's representative. The SHCO shall also ascertain whether there is a representative of a Federal contracting agency at the jobsite. If there is, he shall contact that representative, advise him of the inspection and request that he attend the opening and closing conferences.

(3) The SHCO shall also advise all employers that a closing conference will be held, and request that each of them arrange to have a representative attend that conference.

(4) At an appropriate time prior to or during the course of the inspection, the SHCO shall complete the pertinent parts of the MTSH-1 Form for each employer. The SHCO should indicate on this form both the home office and the jobsite addresses of each employer. In addition, attached to the MTSH-1 Form for the general contractor, there should be a general narrative on the inspection of the jobsite including reference to all MTSH-1 Forms for each subcontractor performing on the job.

(5) At the initial conference or at some other suitable time during the inspection, the SHCO should ascertain who is responsible for providing such special services as common sanitation, eating facilities, first aid, etc., available to all employees on the jobsite.

(6) If the inspection is being conducted as a result of a complaint or complaints received, furnish a copy of the complaint(s) as follows:

(a) A copy of every complaint, including complaints against subcontractors, should be provided to the general contractor.

(b) A copy of every complaint against the general contractor should, if possible, be provided to every subcontractor whose employees may be exposed to the alleged hazard.

(c) A copy of every complaint against a subcontractor should be provided to that subcontractor and, if possible, to others whose employees may be exposed to the alleged hazard.

h. Worksite inspection.

(1) The principles and procedures in Chapter V, Section F, pertaining to establishment inspection and the walkaround provision, are applicable. That section is supplemented by the following paragraphs.

(2) Each employer is entitled to select an authorized representative to accompany the SHCO during the inspection. Similarly, the employees of each employer have the right to select an authorized representative for this purpose. If the job is unionized, then the labor organization representing the employees would select the authorized employee representative. In situations where there is no union, the SHCO would normally interview a reasonable number of employees to determine whether hazards exist. A reasonable number of employees should include at least some employees of each employer and each craft on the job.

(3) The main difficulty in implementing the "walkaround" provisions on construction sites derives from the fact that in the usual situation there will be numerous employers on the job; the result might be that if all employers and groups of employees selected a different representative to accompany the SHCO on the inspection, the group participating in the inspection would be so large that work on the jobsite might be disrupted and the effectiveness of the inspection would be diminished.

(4) Several approaches may be utilized to avoid this situation. An attempt shall be made to urge both employer and employees to select, respectively, a limited number of representatives for accompaniment purposes. It shall be pointed out by the SHCO that this arrangement would make an effective inspection possible without diminishing their accompaniment

rights. It may further be suggested that if any matter comes up during the course of the inspection that requires special knowledge, the representative of the appropriate employer, or employees, could be called in to participate in that phase of the inspection.

(5) Another alternative would be for the SHCO to divide the inspection into separate phases, e.g., excavation work followed by electrical work, and so forth. If this procedure is followed there should be a limited number of employer and employee representatives for each phase of the inspection. However, the SHCO should avoid to the extent possible inspecting the same work areas more than once.

(6) The SHCO shall conduct the inspection accompanied by the representatives designated by the employers and employees. However, if during the course of the inspection, the SHCO determines that because of the large number of persons involved the inspection is not being conducted in an effective manner or that work is being unduly disrupted, he should advise the participants that he intends to discontinue the walkaround, and instead interview a reasonable number of employees. If the participants then agree to a limited number of representatives for accompaniment purposes, the SHCO may resume the inspection with such representatives.

i. General duty requirement. (Refer to Chapter VIII, Section A.)

j. Receiving complaint during inspection. (Refer to Chapter V, Section G.)

10. Safety Clothing and Equipment

Refer to Chapter V, Section H.

11. Closing Conference--Employers

a. For general instructions refer to Chapter V, Section I. This section shall be supplemented in the following paragraphs, b and c.

b. Upon completion of the inspection, the SHCO shall confer with the general contractor(s) and all appropriate subcontractors or their representatives, and advise them of all apparent violations disclosed by the inspection. He shall also indicate the applicable section or sections of the standards violated.

c. The SHCO shall make certain that he has obtained the names and addresses of the general contractor(s) and all other employers at the worksite who may be cited for violations.

12. Closing Discussion with Employees, if Required

Refer to Chapter V, Section J.

13. Issuance of Citations and Proposed Penalties

a. Citations.

(1) The general instructions in Chapter X will apply to the issuance of citations in the construction industry.

(2) Who to cite. The instructions in Chapter X shall govern the determination of which employer to cite in the construction industry. Those instructions state the following general principles:

(a) Any employer (prime or subcontractor) who creates a hazard which endangers employees (whether his own or those of another employer) will be cited. For example, unsafe welding operations may adversely affect the employees of the welding employer as well as those of other employers. The employer whose violations resulted in the unsafe welding would be cited. Where two or more employers have created the same hazard, all shall be cited.

(b) An employer who does not create a hazard may be cited if he permits his employees to work in an area where they are affected by a hazard created by another employer, if he knew or should have known of the hazard before permitting them to work in that area. For example, where unsafe scaffolding is erected and used by a specialty subcontractor (e.g. a specialty scaffold used only for plastering) only that employer will be cited. However, if any other employees have used the unsafe equipment, their employer may be cited also, whether or not he erected the equipment, if he knew or should have known of the violating condition of the scaffold.

(c) In addition to those general instructions, the following will also apply in the contruction industry situation. There is no general rule that prime contractors will be cited for violations by subcontractors.

Rather, prime contractors will be cited only in accordance with the guidelines set forth above and in Chapter X. However, the prime contractor should receive a copy of each citation issued at the construcsite, including citations issued to all subcontractors.

(d) Because of the nature of the construction industry and the complex employer relationships involved, difficult issues as to which employer shall be cited will often arise. In such situations, the SHCO shall obtain as many pertinent facts as possible and consult with the Compliance Supervisor and the Bureau Solicitor, as appropriate.

(e) In the construction industry, one general contractor or more sometimes agree to share the responsibility and profits of the contract. In such situations, one citation shall be issued to the joint venture, naming all parties involved, and copies shall be sent to all such parties. In imminent danger situations, the SHCO shall attempt to contact all joint venture members, but if he is unable to contact all of them, he shall contact as many as possible and proceed as outlined in Chapter IX.

b. Penalties and mailing.

(1) The instructions in Chapters XI and XII of this Manual relating to proposed penalties shall be followed. Where the employer is being cited or a penalty is proposed against him, mailing instructions in the next paragraph shall apply.

(2) If an employer's home office is in the same general area as the jobsite, the original documents shall be mailed to the home office and a signed copy filed at the Area Office. In the case of large organizations where the home office is in a different city, the original documents shall be mailed to the jobsite and a copy to the home office.

14. Where the Post Citations

a. At many construction sites, the employer (whether prime contractor or subcontractor) provides a trailer or other jobsite office. Where such a facility is provided and employees are likely to be in the vicinity of the facility on a daily basis, the citation shall be posted at that location. A copy of the citation shall also be posted at any other location of the employer where employees are required to report on a daily basis. In some situations, such a location would be the employer's main or branch office; in other situations, such as highway construction, the location would be the place where employees actually work.

b. Where no obvious place for posting the citation exists (such as in highway construction where the trailer may be a considerable distance away and employees do not report to the trailer) the employer shall be required to furnish a suitable object on which to post the citation in a conspicuous location. In any case where the citation will be exposed to rain or snow, the citation shall be protected from the elements.

15. Followup

a. Due to the rapid change of conditions as the construction work progresses, the periods set for abatement of violations at construction sites will generally be short, often just a few days. Accordingly, it is essential that followup inspections be conducted very shortly after the original inspection.

b. The followup inspection shall primarily be concerned with determining whether the violations disclosed by the original inspection have been abated. However, because of the possibility of new violations developing as the work progresses and conditions change, the SHCO shall be alert to all hazards on the job, particularly with respect to those arising from the operations of new subcontractors.

c. The followup MTSH-1 Form shall refer to the Identification Block of the original report. Inspection summary information shall be used only for new violations.

d. If all violations noted on the previous citation(s) are abated and no new violations are observed, the SHCO shall recommend that the case be closed.

e. If the followup inspection disclosed that the employer has failed to abate a hazard within the period set in the citation, the SHCO shall report the matter to the Compliance Supervisor who will notify the employer of such failure and of the proposed penalty by certified mail. (See Chapter VIII and XI.)

16. Imminent Danger

Refer to Chapter IX.

17. Expedited Citation Procedure

a. Refer to Chapter V, Section K. That section shall be supplemented by the following guideline in the next paragraph.

b. There may be occasions when the SHCO will inspect construction contractors who will be completing their work activities and leaving the workplace before a citation could be mailed to them. Other situations may arise in which the SHCO may want to get a citation of a serious violation posted immediately in order to get the violation quickly abated.

18. Determination of Abatement Periods

Refer to Chapter X.

B. Maritime (Reserved)

C. Agriculture (Reserved)

CHAPTER VIII--VIOLATIONS

A. Basis of Violations

1. Standards

a. The standards adopted by the bureau are the standards to be used as a basis for citation. These standards adopt the construction safety standards of Title 29 CFR, Part 1518 and the maritime standards of Title 29 CFR, Parts 1501-1509. (For instructions on the writing of citations for violations of such adopted standards, see Chapter X.) As a general matter, each subsection of the regulations shall constitute a separate standard for purposes of citation. For example, a separate violation shall be cited for each condition of scaffolding which does not comply with any of the subsections of the regulations. Specifically, a scaffold more than 10 feet above ground without a midrail on its platform violates one section of the standards; if the scaffold planks do not extend over the end supports by more than 6 inches and less than 18 inches, the scaffold violates another part of the same section.

b. Particular and general standards.

   (1) As provided in the adopted standards, if a particular standard is specifically applicable to a condition, that particular standard prevails over a different standard which might otherwise be applicable to that same condition. For example, a standard specifically prescribing personal protective equipment for ship repairmen, would apply and would not be superseded by any different general standard which might otherwise be applicable to ship repairmen in those circumstances. A general standard is any standard not specifically titled for a craft, (i.e. construction, logging, etc.)

   (2) On the other hand, a general standard will apply to employments and places of employment in an industry, even though particular standards are presecribed for that industry, to the extent that none of the particular standards are applicable.

2. General Duty Requirement

a. During the course of an inspection, the SHCO's primary concern will be determining whether the employer is complying with safety and health standards promulgated under the Act. However, attention should also be directed to whether the employer is complying with the general duty clause in Section 5(1)(a) of the Act, which applies to every workplace. That clause provides that each employer "shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees."

b. Definition guides.

(1) A hazard is "recognized" if it is a condition that is (a) of common knowledge or general recognition in the particular industry in which it occurs, and (b) detectable (1) by means of the senses (sight, smell, touch, and hearing), or (2) is of such wide, general recognition as a hazard in the industry that even if it is not detectable by means of the senses, there are generally known and accepted tests for its existence which should make its presence known to the employer. For example, excessive concentrations of a toxic substance in the air would be a"recognized hazard" even though they could be detected only through the use of measuring devices. However, if a specific standard covered the hazard, the general duty clause would not be applicable. (See paragraph c. below.)

(2) A hazard is causing or is likely to cause serious physical harm if it is causing or would more likely than not cause serious physical harm, as defined in Section B of this Chapter.

c. Use of general duty.

The general duty provisions should be used in inspections only where there are no specific standards applicalbe to the particular hazard involved. The standards expressly provides that an employer who is in compliance with a specific standard shall be deemed to be in compliance with the general duty clause insofar as it applies to hazards covered by the specific standard. Any recognized hazard created in part by a condition not covered by a standard may be cited under the general duty clause.

d. Citations under general duty clause.

No citation shall be issued for "other violations based on the general duty clause. Citations under the general duty clause should be limited to serious, willful, or repeated violations. See Chapter V, Section I, regarding closing conference discussion with employer of hazards regarding which citations will not be issued.

e. Proposing penalties under general duty clause.

Penalties shall be proposed for serious, willful, or repeated violations under the general duty clause in accordance with guidelines set forth in Chapter XI.

3. Violations of Regulations

An employer may be cited for violations of the following requirements under Sections 8(3)(a), 9(2) of the regulations: (a) posting requirements, including the requirements to post notices advising employees of their rights, to post citations and to post the annual summary; (b) recordkeeping requirements, including maintaining the log and supplemental records; (c) the requirement that the employer, in certain circumstances, give advance notice to employees; and (d) the requirement that the employer report to the nearest Area Office, either orally or in writing, any occurrence of an employment accident which is fatal to one or more employees or which results in hospitalization of five or more employees, within 48 hours of such occurrence. Citations for "other" violations shall be issued for violations of the requirements of the regulations. Penalties shall be proposed in accordance with guidelines in Chapter XI.

B. Types of Violations

1. Serious Violations

a. Section 26(1)(b) of the Act provides: ". . . a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation."

b. In deciding whether a violation is serious, the SHCO must decide:

(1) Is there a substantial probability that death or serious physical harm will result? And, if so;

(2) Did the employer know, or with the exercise of reasonable diligence should he have known, of the hazard?

c. Following are the general policy guidelines for the determination whether a violation is serious.

(1) Is there a substantial probability that death or serious physical harm will result?

(a) The SHCO must make an evaluation as to the likelihood that death or serious physical harm could result from the condition which is violative of the standard or the general duty clause. If the more likely consequence is something less than death or serious physical harm, the violation is not serious. For example, violations of various housekeeping standards may result in tripping hazards, but the more probable consequence of these conditions could be strains and contusions, which are not serious physical harm.

(b) On the other hand, if the more probable result of the condition is death or serious physical harm a serious violation exists. Violations involving inadequate scaffolding or inadequate guardrails at substantial heights would normally be serious since it is more probable than not that the result of such hazard could be death or serious physical harm.

(c) In all cases, the decision will require professional judgment, based on an evaluation of the specific facts in light of the statutory definitions and these guidelines. In making the determination of the probable consequence of a condition, the SHCO must consider both (1) the likelihood of death and serious physical harm resulting from the accident (or illness) and (2) the likelihood an accident (or illness) could take place as a result of the hazardous condition. Thus, for example, in the case of the guardrail, the question would be whether there could be an accident, i.e., whether a person could fall as a result of the violation, and if so, whether death or serious physical harm could result from the fall. There is no specific requirement for mathematical probability that the hazard would lead to an accident; however, consideration must be given as to whether there is a remote possibility that an accident could result from the hazard. For example, in the case of failure to provide fire exits and fire extinguishers, the SHCO, although concluding that is is more probable than not that death or serious injury could result if a fire took place, might decide that because of the nature of the building, the materials used and other factors, there is little likelihood that a fire will take place. In this situation, it would be appropriate to decide that no serious violation had occurred.

(d) In sum, the emphasis in deciding whether a violation is serious should be on the seriousness of the consequences of an accident (or illness) rather than on the statistical probability that the accident (or illness) will occur from the hazard. The question to be determined by the SHCO is whether because of the nature of the hazard there could be an accident (or illness), and whether, as a result of such accident (or illness) it is more probable than not that there will be death or serious physical harm.

(2) What is meant by "Serious Physical Harm?"

Serious physical harm is that type of harm that would cause permanent or prolonged impairment of the body in that (1) a part of the body would be permanently removed (e.g., amputation of an arm, leg, finger; loss of an eye); or rendered functionally useless or substantially reduced in efficiency on or off the job (e.g., leg shattered so severely that mobility would be permanently reduced), or (2) a part of an internal bodily system would be inhibited in its normal performance to such a degree as to shorten life or cause reduction in physical or mental efficiency; e.g., lung impairment causing shortness of breath. On the other hand, breaks, cuts, bruises, concussions or similar injuries would not fit into either of these categories and would not constitute serious physical harm. The SHCO should consider the possible results of the hazard, when assessing serious harm. Where the hazard has already resulted in an accident, the injury that has actually taken place would, of course, be quite relevant. However, it should be emphasized that the fact that an accident did result in a particular type of injury is not conclusive as to the type of injury (or illness) that is the probable consequence of the hazard.

(3) Did the employer know or should he have known of the hazard?

(a) A violation would not be serious if the employer ". . . did not, and could not with the exercise of reasonable diligence, know of the presence of the violation." If the SHCO can satisfy himself that the employer knew of the violation, the condition would be met. However, in many cases this will not be possible. In that event, the question is whether an employer exercising "reasonable diligence" should have known of the violation. On this issue also, the SHCO must exercise professional judgment. The standard of diligence would be that of a reasonably prudent employer; i.e., an employer who is safety conscious and who possesses the technical expertise which would normally be expected of an employer engaging in that particular activity.

(b) For example, although the employer may not actually have known that the trenches on his construction job were inadequately shored, if a reasonable construction employer would be expected to check (either himself or through his agents) as to whether the trenches were shored, and to know that inadequate shoring was a hazard, the violation would be serious (if other conditions were met). On the other hand, if the hazard developed suddenly, and even through reasonable precautions the employer would not have known of its existence, the violation would not be serious even though there was a substantial probability that death or serious physical harm would result.

(4) A citation for a serious violation may be issued for a group of individual violations which, taken by themselves, would be nonserious, but considered together would be serious in the sense that in combination they present more probability than not of resulting in death or serious physical harm to employees. For example, violations of maintaining means of exit free from obstructions and continuously maintained automatic sprinkler systems which might be considered nonserious violations if not occurring in the same workplace, might be cited as a serious violation since the SHCO might determine that serious physical harm could more likely than not result.

2. Nonserious (other)

This type of citation shall be issued in situations where an incident or occupational illness resulting from violation of a standard would probably not cause death or seriuos physical harm but which have a direct or immediate relationship to the safety or health of employees. For examples of nonserious see "serious" above; e.g., lack of guardrail at height from which fall would more probably than not result in only a sprain or broken leg (no permanent injury.)

3. De Minimis

No citation shall be issued where a violation of a standard has no immediate or direct relationship to safety or health. In such situations, a notice of de minimis violation shall be issued, with no proposed penalty. Lack of partitions in sanitary toilet facilities would be a de minimis violation.

4. Special Types of Violations

a. Willful.

(1) A "willful" violation may exist under the Act where the evidence shows (1) that the employer committed an intentional and knowing violation of the Act and the employer is conscious of the fact that what he is doing constitutes a violation of the Act, or (2) even though the employer was not consciously violating the Act, he was aware that a hazardous condition existed and made no reasonable effort to eliminate the condition. It is not necessary that the violation be committed with a bad purpose, or an evil intent, to be deemed "willful" under the Act. It is sufficient that the act was deliberate, voluntary or intentional as distinguished from those which were inadvertent, accidental or ordinarily negligent.

(2) The SHCO should carefully develop all evidence available that would indicate an employer's awareness of the disregard for his statutory obligations or of the hazardous conditions. For example, willfulness would exist if an employer has been advised by employees or employee representatives regarding an alleged hazardous condition and makes no reasonable effort to verify the condition and determine whether any statutory obligation has been violated. Additional factors which can influence a decision as to whether violations are willful include:

(a) The nature of the employer's business and what knowledge regarding safety and health matters could reasonably be expected in that industry.

(b) What precautions the employer took to guard against violations; for example, are there trained safety personnel responsible for establishing and implementing a company safety program, or is this matter ignored.

(c) Whether the general application of the Act has been called to the employer's attention, and whether similar violations have been called to his attention.

(d) Whether the nature and extent of the violations disclosed are such that a purposeful disregard of statutory obligations becomes clear.

b. Repeated.

Violation of any standard, rule, or order, or the general duty clause, may be cited where a second citation is issued under the Act for violation of the same standard, rule or order, of the same condition violating the general duty clause for which a previous citation was issued. A repeated violation differs from a failure to abate in that repeated violations exist where the employer has abated an earlier violation and, upon later inspection, if found to have violated the same standard. A notice of failure to abate would be appropriate where the employer has been cited and fails to abate the hazard cited within the abatement period.

NOTE: The question whether to issue a citation for a willful or repeated violation will frequently raise difficult issues of law and policy, including the evaluation of complex factual situations. Accordingly, no citation for a willful or repeated violation shall be issued without consultation with the Bureau Chief who shall, as appropriate, discuss the matter with the Bureau Solicitor and the Headquarters Office.

c. Imminent danger.

See Chapter IX for definition of, and instructions on, imminent danger.

CHAPTER IX--IMMINENT DANGER

A. Definition

1. Section 3(14) of the Act states "Imminent danger" means a danger exists which could reasonably be expected to cause illness, death or serious physical harm immediately, or before the immence of such change can be eliminated through the enforcement procedures otherwise provided by this act."

2. Therefore, for a condition(s) or practice(s) to constitute an imminent danger situation, it must be concluded that there is a reasonable certainty that immediately or within a short period of time, the condition(s) or practice(s) will cause a dangerous occurrence which will cause death or serious physical harm. The term "serious physical harm" should be interpreted as outlined in the definition of serious violation, Chapter VIII Paragraph B.1.c.(2). Normally, a health hazard (as contrasted with a traumatic injury or death) would not constitute an imminent danger,except in extreme situations, such as the presence of high concentrations of airborne toxic substances which are an immediate threat to the lives or health of employees.

B. Procedures for Handling Allegations of Imminent Danger

1. General

Any allegation of imminent danger received by an OSH office shall be handled in accordance with the following procedures:

a. Compliance Supervisors shall immediately ascertain whether there is a reasonable basis for the allegation and alert the Bureau Chief and the Bureau Solicitor to the situation.

b. The Compliance Supervisor shall make a preliminary determination of the requirements for the inspection.

c. If the imminent danger allegation appears to the Compliance Supervisor to have merit, the SHCO shall contact the employer immediately, ascertain as many pertinent details as possible concerning the situation and attempt to have abatement acheived voluntarily prior to the inspection. The SHCO should ascertain what steps, if any, the employer intends to initiate in order to abate the danger. Whether or not the employer indicates that he will try to abate the danger, appropriate steps shall be taken to prepare for and conduct an inspection in accordance with the procedures in this chapter.

2. Technical Considerations

   a. After the determination to inspect has been made, the inspection of the workplace should be thoroughly planned to the extend time permits.

   b. The CS and SHCO should review the known facts and ascertain what technical equipment and personnel may be necessary to conduct the inspection.

      (1) In highly technical situations, consideration should be given to use of specialists (e.g., industrial hygienists) headquarter technical support staff, staff from other area offices, headquarter office staff, or staff of the Federal Institute of Occupational Safety and Health.

      (2) Equipment to be used must be tested and calibrated, if appropriate.

      (3) If detrmination of whether there is an imminent danger situation requires the analysis of samples to be taken during the course of the inspection, arrangements should be made to have such samples analyzed as quickly as possible. Rapid analysis is essential.

         (a) The compliance supervisor shall make advance arrangements with local recognized laboratories for rapid analysis of samples from suspected imminent danger situations which require immediate action.

3. Scheduling

   a. Any allegation of imminent danger received by an OSHA office, whether written or oral, shall be handled on a highest priority basis. Other commitments, weekends, holidays, leave and other thorough handling of these cases.

      (1) If it is determined that an inspection should be made, the inspection should be scheduled and conducted at the earliest possible time. Except in extraordinary circumstances, the inspection should be conducted within 24 hours of receipt and evaluation of the allegation of imminent danger.

      (2) Where the time necessary to obtain special equipment or technical personnel for inspection would unduly delay the insepction, it may nevertheless be advisable to schedule and conduct a preliminary inspection within 24 hours of receipt of the allegation. The required equipment and/or personnel can then be brought in later to assist in abatement or determinating the existence of violations.

b. If, during an inspection, an alleged imminent danger situation is brought to the SHCO's attention, he should proceed to immediately inspect the alleged condition(s) or practice(s) to determine whether an imminent danger exists.

c. If, during an inspection, the SHCO discovers an imminent danger situation, or determines after inspecting an alleged imminent danger situation that such a situation does or may in fact exist, he should immediately follow the procedures outlined in paragraph C.3. of this Chapter. If the SHCO has any doubt as to whether a condition or practice constitutes an imminent danger, he should first consult with the Compliance Supervisor.

C. Inspection

1. Scope

a. In an inspection conducted because of an allegation of imminent danger, the alleged imminent danger situation shall be inspected first.

b. Any additional inspection activity should take place only after resolution of the imminent danger situation. Where the imminent danger situation has been resolved, a complete inspection of the establishment may be conducted in accordance with the procedures in Chapter V.

c. If an imminent danger situation is alleged or is brought to the attention of the SHCO during a routine inspection, he shall immediately inspect that situation and proceed in accordance with the procedures in this Section.

2. Procedures

a. Any inspection of an imminent danger situation shall be conducted in accordance with the requirements of the Act, the regulations and the provisions of Chapter V of this Manual. For example, an opening conference, walkaround, and a closing conference are requirements of such an inspection.

b. However, considering the urgent nature of imminent danger situations, all such procedural steps should be taken as expeditiously as possible.

c. Voluntary compliance.

(1) As soon as it is concluded that conditions or practices exist which constitute an imminent danger, the SHCO shall attempt to have the danger corrected through voluntary compliance. The employer or his representative should be advised that such a danger exists. he should also be advised of the provisions of Section 13 of the Act. In addition, if any employees appear to be in immediate danger, they should be informed of the danger and the employer should be requested to remove them from the area of immediate danger.

(2) If the employer agrees to voluntarily abate the imminent danger, the SHCO and any other technical support staff present shall assist the employer to the maximum extent possible. However, the employer is ultimately responsible for determing the manner in which he will abate the dangerous condition. The SHCO shall inform the affected employees of the dangerous condtion and arrange with the employer for their removal from the affected area until the imminence of the danger can be eliminated or the danger removed. OSH personnel should determine that abatement has been achieved before leaving the establishment and shall be given satisfactory assurance that the situation will not recur.

(3) An employer shall be deemed to have abated an imminent danger if he eliminates the imminence of the danger (by removing employees from the area of danger) or eliminates the conditions or practices which resulted in the imminent danger.

(4) If abatement is achieved boluntarily, the SHCO shall make the appropriate notation on the MTSH-1 Form. Appropriate citation(s) and notice(s) of proposed penalties shall be issued regarding the hazard. (See paragraph C.3. of this chapter and chapters X, XI and XII).

d. Refusal to abate.

(1) If abatement is refused, the SHCO shall notify the Compliance Supervisor by telephone. The SHCO shall immediately inform the employer(s) and the affected employees of the danger(s) involved and that he is ordering that part of the place of employment which is in imminent danger closed down. Upon issuance of any such order the Bureau Chief shall fix a time and place for a hearing, not later than twenty-four hours thereafter, before the board. Not more than twenty-four (24) hours after the commencement of the hearing, the division shall affirm, modify, or set aside the order.

(2) If a telephone call is not feasible or the SHCO is not able to contact the Compliance Supervisor or someone authorized by the Supervisor to act on such matters during his abasence, the SHCO shall exercise his professional judgment in proceeding with the instructions in paragraph C.3, and shall contact the Compliance Supervisor as soon as possible.

(3) The Compliance Supervisor shall then inform the Bureau Chief and request the Bureau Solicitor to obtain a court order restraining the imminent danger.

(4) The Bureau Chief and the Bureau Solicitor shall make immediate arrangements for the initiation of court action. The SHCO' shall give absolute first priority in scheduling his activities to preparing for litigation in imminent danger matters.

3. Writing and Posting Citations in Imminent Danger Situations

a. An imminent danger situation may result from one violation or a combination of violations. Each violation may be serious "other," willful or repeated.

b. If abatement is refused or cannot be achieved at the time of inspection, the Form (Imminent Danger-Citation) shall immediately be completed. A description of each violation shall be listed on the Form, stating the basis for each violation (general duty or standard) and the type of each violation (serious, "other", willful, or repeated). Penalties will be proposed in accordance with the procedures applicable to the violations involved. (See Chapters XI and XII.)

(1) The original citation Form shall be signed and posted at or near the area in which the exposed employees are working. A copy of the original citation form shall be signed and attached to the inspection report, MTSH-1.

(2) Where there is no suitable place for posting the citation form, the employer(s) responsible for causing the imminent danger shall be requested to provide a means for posting.

(3) If it appears that the affected employees may not see the citation form, the SHCO shall inform them of the danger orally.

c. If it is determined that the imminent danger has been abated an appropriate citation shall be completed. Where appropriate, the expedited citation procedure should be utilized. (See Chapter V, Section K.) Otherwise, citations shall be completed in the Area Office in accordance with routine procedures. Penalties will be proposed in accordance with the procedures applicable to the violations involved. (See Chapters XI and XII.)

D. Followup Inspections

1. Where a court has issued an injunctive order in an imminent danger situation, the followup inspection shall take place immediately after the court order is issued, to determine if the employer is complying with the terms of the order. Guidelines pertaining to followup inspections are set forth in Chapter V.

2. Where no court proceeding has been initiated because the imminence of the danger has been eliminated, but total abatement has not been achieved, a prompt followup inspection shall be conducted.

3. Where the hazard has been totally abated at the time of the inspection, the Compliance Supervisor shall determine whether a followup inspection is necessary.

CHAPTER X--CITATIONS

A. Writing Citations

1. General

The proper writing of citation is an essential part of the enforcement process; improperly written citations cause confusion, encourage unnecessary contests, and result in the Commission vacating or modifying otherwise valid citations for technical reasons. Therefore, the following guidelines should be followed in order to fulfill the requirements for a proper citation.

2. Specific Guidelines

These guidelines shall apply to the filling out of the "Citation", MTSH-2 Form, and the "Citation for Serious Violation", MTSH-2A Form. Further instructions for filling out these and the other forms are contained in Chapter XII. Both the MTSH-2 and 2-A Forms contain columns for (1) standard or regulation allegedly violated, and (2) description of alleged violation.

a. "Standard or regulation allegedly violated" Column

(1) If a condition or practice constitutes an alleged violation of a standard(s), complete this column by noting the standard(s) violated: for example, 29 CFR 1910.26(a)(i). For a violation of the general duty clause, complete this column as follows: Section 5(1)(a) of the Montana Occupational Safety and Health Act of 1973. It should be noted that the basis for citation of a safety or health condition shall be either a standard(s) or the general duty clause, but not both. (See Chapter VIII, Section A.1 and 2. for definition of and differences between violation of standards and general duty requirement).

(2) If a construction employer is to be cited under a construction standard, the standard shall be cited in the following manner for the following industries:

(a) construction--"29 CFR Section 1518.__, as adopted by 29 CFR Section 1910.12." or Montana Construction Code, Chapter I, Paragraph 1.

(b) Reserved

(3) See Chapter VIII, Section A., for situations where general standards of Title 29 CFR Part 1910 may apply to construction. Questions may arise as to whether to cite a hazard under a particular (i.e., vertical) standard, such as construction, or under a general (i.e., horizontal) standard in Title 29 CFR Part 1910. For example, a question may arise as to whether landscaping is construction work, which should be cited under the construction standards. In such cases, contact the Bureau Chief and the Bureau Solicitor, as appropriate.

(4) If a regulation (e.g., recordkeeping or posting), as distinguished from a safety or health standard, is allegedly violated, specify that regulation by number. For example, if the employer failed to post a citation, the appropriate column would be filled in as follows; "MOSHA 1973, Section 9(2)".

(5) Where the general duty clause is being cited as the basis for the alleged violation, and a standard with a delayed effective date would have covered that condition if it had been in effect, the delayed standard shall not be referred to in this column. However, only in limited circumstances will citations under the general duty clause be issued for hazards that will be covered by standards that are not yet effective. Before issuing a general duty citation in these circumstances, consult with the Bureau Chief and the Bureau Solicitor. (See paragraph A.2.b.(3) of this chapter for instructions in filling out the description of alleged violation column in such instances.)

(6) As discussed in paragraph B.1.c.(4) of Chapter VIII, several alleged violations may be found which, taken by themselves, would have been nonserious, but which, considered in combination as parts of one condition, constitute one serious violation. In citing such a violation on the MTSH-2A each of the standards violated should be set forth (e,g., 29 CFR 1910.28(f)(11), 29 CFR 1910.28(f)(12), 29 CFR 1910.28(f)(13)). The next column, "Description of alleged violation," shall contain a description of each of the alleged violations, in accordance with the instructions of paragraph b., below. However, in addition to the description of each individual violation, there shall appear at the bottom of that column a description of how noncompliance with each standard combines to create the condition which constitutes the one serious violation being cited.

b. "Description of alleged violation" Column

(1) The description of the alleged violation of a standard should fully state the observed condition(s) or practice(s) which does not comply with the requirement of the standard. Such description should be particular in stating the area where the condition or practice was observed, as well as all pertinent factual details of the alleged violation. Examples of such descriptions are as follows:

> "Flexible cord on 24 inch fan in the Mill Building has a splice approximately 2 feet from termination. Splice is wrapped with electrical tape."

> "In Latex Building, electrical equipment not installed in workmanlike manner. Control station underneath Hot Tank #7 in the Latex Building has unmarked switches, meters and exposed conductors on splices. Electrical wires are not routed in an orderly manner."

(2) Similarly, any description of an alleged violation of the general duty clause should be completed by stating the condition or practice which constitutes the alleged violation and describing how that condition or practice violates the particular elements of the general duty clause (see paragraph A.2 in Chapter VIII for definition of general duty violation). For example:

> "The employer failed to furnish his employees working in the (work location, shop, area, etc.) a place of employment which was free from recognized hazards that were causing or were likely to cause death or serious physical harm to his employees in that ______________________
> (Describe hazardous condition or practices)
> ______________________."

(3) Where the general duty clause is being cited as the basis for an alleged violation, and a standard with a delayed effective date would have covered that condition if it had been in effect, the delayed standard shall not be referred to, nor shall its specific language be referred to in the citation. However, its language may be generally helpful in describing the alleged violation. (See paragraph A.2.a.(3) of this Chapter for filling in the "standard allegedly violated" column in such instances.)

(4) In situations where citations are to be issued as a result of an accident investigation, the description of alleged violations column of these citations shall make no reference to the fact that an injury or death resulted from such violation, even though that may be true. Such information is irrelevant to the citation and may invite contest.

B. Grouping of Violations

1. When to Group

a. As a general matter, all instances of the same violation of a single standard (See paragraph [illegible] in Chapter VIII) which are disclosed during an inspection of a single establishment will constitute one alleged violation. This principle will be applicable both to serious violations and "other" violations.

b. The Compliance Supervisor shall contact the Bureau Chief for further instructions where, in his judgment, a single citation will not be sufficient to cover a flagrant situation involving numerous instances of the same violation.

2. When Not to Group

a. In separate establishments of the same employer.

Where inspections are conducted, either at the same time or different times, at two establishments of the same employer, and instances of the same violation are disclosed during each inspection, the employer would be cited for two alleged violations. Normally, all operations of an employer in the same location would be considered to be a single establishment.

b. In separate inspections of the same establishment.

Where inspections of the same establishment of an employer are conducted on two different occasions, and instances of the same violation are disclosed during each inspection, the second instance of such violation may constitute a "repeated" violation. For discussion of "repeated" violation see Chapter VIII. Where a followup inspection is conducted to determine whether a violation(s) has been abated, it will normally be appropriate to issue a notice of failure to abate where one or more instances of the cited violation(s) remain unabated.

c. What constitutes "separate" inspection

Generally, an inspection may be considered to be a single inspection even if it continues for a period of more than one day, or is discontinued with the intention to resume it after a short period of time.

3. Special Industry Guidelines for Grouping

a. For the purpose of applying these guidelines in the construction industry, an establishment would normally be the site of the construction job, e.g. the building site, the dam site. Where the construction site extends over a large geographical area (e.g., road building) the entire job will be considered a single establishment and all instances of the same violation disclosed during a single inspection would constitute one alleged violation.

b. Reserved

C. Citing Violations Not Actually Observed

1. General

As a general rule, working conditions that allegedly violate the MOSHA safety and health standards or the general duty requirement shall be cited only when actually observed by a SHCO during the course of an inspection or followup inspection. This general rule shall apply except in special circumstances, which include:

a. Accident investigations where the hazardous condition no longer exists at the time of the inspection, but where the SHCO and either the Compliance Supervisor or the Bureau Chief determine on the basis of the available evidence that a violation existed at the time of the accident. (See Chapter VI.)

b. Circumstances where authorized advance notice has been given and at the time of the inspection, the SHCO determines, and the Compliance Supervisor agrees, that alterations have taken place as a result of the advance notice so as to give a misleading impression of the conditions in the workplace, i.e., that an alleged violation existed at the time of advance notice and was removed prior to inspection. (See Chapter V.). Citation may also be appropriate where the employer was given advance notice of an inspection for an alleged imminent danger, and the inspection disclosed that there was an imminent danger but that it was abated prior to the inspection.

2. Basis of Citation

Citations may be issued under the preceding subparagraphs on the basis of a credible employee statement(s) which is (are) reduced to writing, and signed by the employee(s).

3. Limitation

As provided in Section 9(3) of the Act, no citation may be issued after the expiration of 6 months following the occurrence of any violation.

D. Citations for Employee Actions which Violate Safety and Health Standards

1. General

Section 5(2) of the Act provides that each employee shall comply with all standards which are applicable to his own actions and conduct. However, the Act does not provide for the issuance of citations or proposed penalties to employees. Accordingly, to effectuate the statutory purpose of achieveing safe and healthful working conditions, employers will be responsible for assuring compliance with standards applicable to employee actions and conduct.

2. Employer Responsibility

Where an employee does not comply with the requirements of a standard which is applicable to his own actions and conduct, the employer is subject to citation. For example, if the employees refuse to wear protective equipment provided by the employer, the employer is subject to citation. Employers will thus be responsible for establishing means of becoming informed of situations where their employees do not comply with applicaibe standards, and they should take all necessary action to assure compliance with such standards by their employees.

3. On Site Action

In all such cases, the SHCO shall discuss the employee conduct with the employees and their representatives to attempt to obtain future compliance. During the closing conference, the SHCO shall point out to the employer such employee actions or conduct for which the employer may be cited. The SHCO shall also advise the employer that it is his responsibility under the Act to assure compliance by his employees with the applicable standards.

4. In cases where employees systematically refuse to comply with the standards applicable to their own actions and conduct, the matter shall be referred to the Bureau Chief. Involvement in labor/management disputes or collective bargaining issues shall be avoided.

E. Establishment Operated by Employee of One Employer While Employees of a Second Employer Are Also Working in that Establishment

1. Generally, each employer is responsible for the working conditions of his own employees. Difficult matters of judgment in citing will arise where employees of different employers are working in the same establishment. For example, employees of an employer who operates an establishment may be present, along with employees of a second employer (or contractor) who may be working in or in the same establishment, such as employees whose employer has contracted with the operating employer to perform such work as remodeling, general maintenance, or special services.

2. The following guidelines will be helpful in determining which employer to cite. If a question remains in any case, contact the Bureau Chief for guidance as to particular situations.

   a. If an employer creates a violating condition and that condition affects his employees or an other employer's employees, or both, then the employer who created the condition will be cited. Two or more employers who create a violating condition may each be cited for the violation.

   b. An employer, although not creating the hazard, may be cited if he knew or reasonably should have known of the hazard before permitting his employees to work in the hazardous area or with hazardous equipment.

F. Abatement

1. General

   a. The establishment of an abatement date requires the exercise of maximum professional judgment on the part of the SHCO and the Compliance Supervisor. The following guidelines should be of assistance in exercising this judgment. All of the relevant factors of each situation should be used in determining what is a reasonable time for abating a particular violation. Such factors could be: the seriousness of the violation, the number of exposed employees, the availability of needed equipment or personnel, the estimated time required for delivery and installation of needed equipment, and any other relevant circumstances.

   b. The abatement period should be the shortest interval within which the employer can reasonably be expected to correct the violation. Normally, an abatement date shall be set forth in the citation as a specific date, not a number of days. However, when the abatement period is very short (i.e., five working days or less), and when it is uncertain when the employer will receive the citation, the abatement period shall be stated in terms of a number of days from receipt of the citation. In most instances, a period of no longer than 30 days should be sufficient. When allowing 30 days for abatement, as an example, at the time the citation is written the abatement date should be a specific date 30 days from the date the employer is expected to receive the citation in the mail.

2. Abatement not Exceeding 30 Days

Where the abatement period does not exceed 30 days, the employer will be required to advise the Compliance Supervisor as to the specific corrective action taken with respect to each violation and the date of such action, as explained in the MTSH-2c Form. This report must be submitted no later than the latest abatement date (of 30 days or less) for all such violations. (See instructions in paragraph F.3.B. of this Chapter.)

3. Abatement Exceeding 30 Days

a. In some circumstances, a period in excess of 30 days will be needed for abatement. Such situations may arise where, for example, extensive structural changes are necessary, or where new equipment or parts must be ordered and cannot be delivered within 30 days. If after consultation with the SHCO, the Compliance Supervisor determines that the circumstances warrant an abatement period in excess of 30 days, such a period shall be indicated on the citation. In such cases, it often will be appropriate to provide for multi-phased abatement (See paragraph F.5 of this Chapter).

b. In the situation outlined in the preceding paragraph the employer shall be asked to submit a progress report at the end of each 30 day period, as explained in the MTSH-2c Form. This report should specify in detail what has been done, what remains to be done, and the time needed to fully abate each violation. The progress report will be in addition to the report of corrective action taken with respect to all other violations with abatement periods of 30 days or less.

4. Unusual Circumstances

Situations may arise where it will be difficult to set a specific abatement date when the citation is originally issued. This could arise where the employer is being required to implement feasible engineering controls. In this situation, it may be proper to require in the citation that the employer submit a program of abatement by a specific date. (See following paragraph F.5) Otherwise the SHCO and CS should make the best judgment they can as to a reasonable abatement date. If necessary, at a later date it will be possible to amend the citation with respect to abatement. However because of the legal implications of this action, the Bureau Solicitor should be consulted before the amendment of any citation.

5. Multi-step Abatement--Feasible Engineering Controls

a. The question whether to write citations with multi-step abatement periods will particularly arise in relation to whether abatement can and should be required by feasible engineering controls, as distinguished from feasbile administrative controls or the use of protective equipment. For example, abatement requirements in citations involving the air contaminants standards in 29 CFR Section 1910.93(b) and involving the occupational noise exposure standards in 29 CFR Section 1910.95 (b)(1) should provide that feasible administrative or engineering controls be implemented.

b. The basic principles in multi-step abatement are as follows:

(1) A short range abatement date should be set, designed to give prompt temporary protection to employees pending formulation and implementation of long-range feasible engineering and administrative controls. Short-range administrative controls and protective equipment should be specified in the citation as the initial stopgap (temporary) protection.

(2) A long range abatement date should also be set which would include feasible engineering controls and long-range administrative controls. Where the date for the implementation of these long-range controls cannot be determined with certainty, the citation should require that the employer submit a plan of abatement by a specified date and that upon approval, the plan be implemented in accordance with its provisions. The plan should include the details of abatement and a specific timetable for specific actions leading to complete abatement. The date for long-range abatement or the submission of the plan would depend on such matters as the difficulty and complexity of abatement and the anticipated effectiveness of the stopgap abatement measures contained in the citation.

c. In providing for multi-step abatement the following factors should be taken into consideration:

(1) Engineering controls afford the best protection to employees, and abatement by engineering controls should be required in all instances to the extent that such engineering controls are feasible. Such controls remove the cause of the potentially hazardous condition and afford the worker maximum long-range protection. Allowance of temporary protection

(such as personal protective equipment) as the manner of abatement, as opposed to feasible engineering controls, as a practical matter often operates improperly to transfer the responsibility for compliance or noncompliance from the employer to individual workers. Control of the atmosphere or control and reduction of the opportunity for exposure, rather than protective devices against exposure, should be the primary objective in writing citations.

(2) A determination regarding the feasibility of engineering controls should involve an evaluation of engineering ability to accomplish the control. In most instances there is sufficient engineering and scientific knowledge to perfect engineering controls satisfactorily abating a hazard. The question of economic feasibility of implementing such controls will not normally be a factor. But, if a major reconstruction of a plant or a capital expenditure, which would seriously jeopardize the financial condition of the company, is the only method that would achieve effective engineering controls, and if there were feasible alternative administrative controls or protective devices available, engineering controls would not be considered feasible. However, spending that has less serious consequences, for example, replacement or installation of large units of machinery or equipment, even though amounting to thousands of dollars but not otherwise jeopardizing the financial condition of a compnay, would be considered feasible.

(3) If engineering controls are not feasible, citations can properly order full abatement by feasible administrative controls by a specified date. Administrative controls are the next best alternative to engineering controls as a long range abatement solution. In addition to feasible engineering controls, administrative controls should be required for full abatement so as to afford maximum protection to employees. Administrative controls include periodic rotation of employees on shifts, but do not include such methods as biological monitoring or audiogram testing. Biological sampling or audiograms may, however, be a part of a program of administrative controls which includes rotation of employees.

(4) Only in most unusual situations where there are no feasible engineering controls or administrative controls, can full abatement be allowed by protective devices.

CHAPTER XI - PENALTIES

A. Scope

This chapter summarizes the various types of penalties provided for under the Act, outlines the methods to be used for calculating such penalties, provides guidelines to be used for notifying employers of such penalties, and provides instructions for the collection and recovery of such penalties. Specific instructions on the use of the various Penalty Assessment Worksheets, MTSH-10 and MTSH-11 Forms, used to calculate civil penalties and for the preparation of the MTSH-3 and MTSH-3A Forms are contained in Chapter XII.

B. Civil Penalties

1. Type of Violations as a Factor

In proposing civil penalties for violations, a distinction is made between serious violations and all other violations. There is no requirement that a penalty be proposed when the violation is not a serious one; but a penalty must be proposed when the violation is serious in nature. In either case, the maximum penalty that may be proposed for a nonserious or serious violation is $1,000. In the case of willful or repeated violations, a civil penalty of up to $10,000 may be proposed. For other specific violations of the Act, civil penalties of up to $1,000 may be proposed. The following paragraphs describe the procedures to be followed in determining a proposed penalty.

2. De Minimis Violations

No penalty shall be proposed for a de minimis violation. (See Chapter VIII for instructions regarding de minimis violations.)

3. Nonserious (Other) Violations

a. Section 26(1)(a) of the Act provides that any employer who has received a citation for an alleged violation of the Act, and such violation is specifically determined not to be of a serious nature, may be assessed a proposed civil penalty of up to $1,000 for each such violation.

b. All instances of a violation of a single standard as defined in Chapter VIII are considered as a single violation for citation purposes, therefore only one penalty shall be proposed for all such instances. The Compliance Supervisor shall contact his Bureau Chief who will, if necessary, confer with the Bureau Solicitor for further instructions where in his judgment, a single proposed penalty will not be sufficient to cover a flagrant situation involving numerous instances of the same violation. (See Chapter X for detailed instructions on how and when to group violations.)

c. The amount of the proposed penalty, using procedures for calculating such penalties as outlined in the following paragraphs, may range from no penalty to $1,000 for each such violation.

d. Three factors are used to determine the "gravity of violation":

(1) The probability of likelihood of the injury of disease occurring as a result of the alleged violation.

(2) The severity of the injury or disease most likely to result.

(3) The extent to which the applicable provision of the Act was violated.

e. Each one of these gravity factors is rated "A" through "C" depending on the severity of each factor; the "A" rating being the least severe and the "C" rating being the most severe. These three ratings are then averaged to determine the final letter rating. (An "X" rating is to be used only when the employer clearly demonstrates a blatant disregard for the violation in question. This rating will be applied only in rare circumstances and will be given only after consultation with the Area Director.) Each final letter rating has been assigned the following dollar ranges:

"A" = None
"B" = $100 - $200
"C" = $201 - $500
"X" = $501 - $1,000

f. The "unadjusted penalty" is the resultant dollar figure as determined by the final letter rating which was based on the gravity of the violation.

g. The unadjusted penalty may then be adjusted downward (by up to 50 percent) depending on the employer's "good faith", "size" of business, and "history" of previous violations (the penalty adjustment factors). A reduction of up to 20 percent may be given for "good faith". Evidence of good faith includes awareness of the Act, and any overt indications of the employer's desire to comply with the Act by specific displays of accomplishments. A reduction of up to 10 percent may be given for business "size". Business size is measured in terms of the number of employees employed by the employer. Normally this will be based on the number of employees employed at the workplace inspected. However, there may be special circumstances when the number of employees employed by the employer will be more appropriate. A reduction of up to 20 percent may be given for history of previous violations. Normally, history of previous violations will be based on the employer's past experience under the Act. However, there may be special circumstances where it will be more appropriate to consider the employer's past history under other Federal or applicable State safety and health statutes. These penalty adjustment factors are applied to the "unadjusted penalty" to determine the "adjusted penalty".

h. The "adjusted penalty" is reduced by 50 percent (the abatement credit) if the employer corrects the violation cited within the abatement period specified in the citation. This reduction is made at the time the proposed penalty is calculated to determine the proposed penalty to be assessed under Section 26(1)(a) of the Act, for each cited violation.

i. The penalty assessment worksheet, MTSH-10 Form, shall be used to calculate the penalty to be proposed for each cited violation. This worksheet is designed to serve as a guide in calculating the amount of the penalty to be proposed and is, therefore, not to be sent to the employer. Detailed instructions on how to calculate the proposed penalty and how to complete this form are explained in Chapter XII.

j. Once the proposed penalty for each "other" type of violation has been calculated on the MTSH-10 Form, the "Notification of Proposed Penalty", MTSH-3 Form, shall be prepared. The original MTSH-3 Form, signed by the Compliance Supervisor, shall be sent to the employer by certified mail concurrently with the citation. In those instances where it is impossible to issue the MTSH-3 Form concurrently, the MTSH-3 Form should be sent as soon thereafter as possible. In no instance shall the citation be held for an extended period of time pending the preparation of the proposed penalty. The Compliance Supervisor may have the SHCO personally serve the notice. The MTSH-10 Form and a signed copy of the MTSH-3 Form shall be retained in the case file. The original MTSH-3 Form shall be sent to the employer, and this shall include proposed penalties for both serious and "other" violations for which the employer has been cited. The proposed penalty for each "citation item number" as listed on the MTSH-10 Form shall be separately stated on the MTSH-3 Form.

4. Serious Violations

a. Section 26 (1)(b) of the Act provides that any employer who has received a citation for an alleged violation of the Act, and such violation is determined to be of a serious nature shall be assessed a proposed civil penalty of up to $1,000 for each such violation. Criteria for determining whether a violation is to be cited as serious or not is outlined in Chapter VIII.

b. All instances of a violation of a single standard as defined in Chapter VIII are considered as a single violation for citation purposes, therefore, only one penalty shall be proposed for all such instances. The Compliance Supervisor shall contact his Bureau Chief who will, if necessary, confer with the Bureau

Solicitor for further instructions where, in his judgment, a single proposed penalty will not be sufficient to cover a flagrant situation involving numerous instances of the same violation.

c. Due to the severity of a serious violation, the amount of the proposed penalty to be assessed for each cited serious violation is calculated from a base of $1,000 (the unadjusted penalty) which is the maximum penalty allowed for under Section 26 (1)(b) of the Act. The $1,000 unadjusted penalty may then be adjusted downward, by up to 50 percent, depending on the employer's good faith, size of business, and history of previous violations--the "penalty adjustment factor".

d. The penalty assessment worksheet, MTSH-11 Form, shall be used to calculate the penalty to be proposed for each cited serious violation. This is a worksheet designed to serve as a guide in calculating the amount of the penalty to be proposed and is, therefore, not to be sent to the employer. Detailed instructions on how to calculate the proposed penalty and how to complete this form are explained in Chapter XII.

e. Once the proposed penalty for each serious violation has been calculated on the worksheet (MTSH-11 Form), the "Notification of Proposed Penalty, "MTSH-3 Form, shall be prepared. The original MTSH-3 Form, signed by the Compliance Supervisor, shall be sent to the employer by certified mail concurrently with the citation. In those instances where it is impossible to issue the MTSH-3 Form concurrently, it should be sent as soon thereafter as possible. In no instance shall a citation be held for an extended period of time pending the preparation of the proposed penalty. The Compliance Supervisor may have the SHCO personally deliver the MTSH-3 Form. The OSHA-11 Form and a signed copy of the MTSH-3 Form shall be retained in the case file. The original MTSH-3 Form shall be sent to the employer, and this shall include proposed penalties for both serious and "other" violations for which the employer has been cited. The proposed penalty for each "citation number" as listed on the MTSH-11 Form shall be separately stated on the MTSH-3 Form.

5. Imminent Danger

a. Detailed instructions and procedures for imminent danger situations are contained in Chapter IX.

b. Penalties may be proposed in cases of imminent danger even though, after being informed by the SHCO, the employer immediately eliminates the imminence of danger and initiates steps to abate such danger. If the danger is abated, the procedures for calculating and assessing proposed penalties for "other", serious, willful, or repeated violations (as appropriate) should be followed. An imminent danger situation would involve a serious violation if the employer knew, or with the exercise of reasonable diligence could have known of the danger. Otherwise, the imminent danger situation would involve an "other", willful, or repeated type of violation.

c. An imminent danger situation may exist where there is a group of violations each of which taken by itself would be considered as "other", serious, willful, or repeated; but which considered in combination constitutes an imminent danger situation. If voluntary compliance cannot be achieved, the SHCO shall list each violation involved by type (e.g., other, serious, willful, or repeated) on the "Imminent Danger-Citation" MTSH-8 Form. This will constitute one imminent danger situation. If voluntary compliance is achieved, the SHCO shall list each type of violation on the appropriate citation (i.e., MTSH-2, MTSH-2A, etc.). Proposed penalties shall be calculated in accordance with the procedures prescribed for "other", serious, willful, or repeated violations, whichever are applicable. A decision of willful or repeated violations shall not be made without the approval and assistance of the Bureau Chief and, where appropriate, the Bureau Solicitor.

6. Violations of the General Duty Clause--Section 5(1)(a) of the Act

a. Section 5(1)(a) of the Act provides that each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious harm to his employees.

b. Instructions on the use of the general duty clause are contained in Chapter VIII.

c. Citations issued for violations based on the general duty clause are restricted to serious, willful, or repeated violations. In the case of "other" violations, no citation shall be issued based on the general duty clause. Therefore, the procedure to be followed for calculating the proposed penalty is the same as the procedure prescribed for a serious, willful, or repeated violations, whichever is applicable.

7. Effect on Penalties if Employer Immediately Abates, or Initiates Corrective Action

Appropriate penalties will be proposed with respect to an alleged violation even though after being informed of such alleged violation by the SHCO, the employer immediately abates, or initiates steps to abate. However, these actions should be favorable considered when calculating the amount of adjustment to be applied for good faith.

8. Additional Penalties for Failure to Abate

a. Section 26(1)(c) of the Act provides that any employer who fails to correct a violation within the period allowed for an abatement in the citation, may be assessed a proposed civil penalty of not more than $1,000 for each day that the violation continues after the expiration of the abatement period. A daily penalty may be proposed for each failure to correct a cited violation within the abatement period.

b. This penalty provision will be applied when it is disclosed that an employer has not corrected a violation for which a citation has been issued and the citation and proposed penalty have become final.

c. Determining the number of days over the abatement date.

(1) If the employer does not contest within 15 working days after receipt of the notice of proposed penalty, the citation and proposed assessment of penalties shall be deemed to be a final order of the Review Commission and not subject to review by any court or agency and the alleged violation must be corrected within the abatement period specified in the citation. Under these circumstances the number of days not abated will begin on the day following the calendar abatement date specified in the citation and end on the date of reinspection.

(2) If the employer contests an alleged violation in good faith and not solely for delay or avoidance of penalties, the period for abatement does not begin to run until the entry of the final order by the Review Commission affirming the citation. Under these circumstances, the number of days not abated will begin with the day following the calendar abatement date specified in the final order of the Commission affirming the citation and end on the date of reinspection.

(3) It should be noted that if the employer contested only the amount of the proposed penalty, or if there is a determination that the employer did not initiate the review proceedings in good faith but solely for delay or avoidance of penalties the "number of days not abated" will be calculated in accordance with the instructions outlined in paragraph 8(c)(1) of this Section. Such a determination should only be made after consultation with the Compliance Supervisor who may, if necessary, contact his Bureau Chief for further guidance.

(4) If the only notice of contest is one filed by an employee or an employee representative of an employer to whom a citation has been issued; this notice of contest will not suspend the abatement period specified in the citation. Under these circumstances the number of days not abated will be calculated in accordance with the instructions outlined in paragraph B.c.(1) of this Chapter.

d. There will be occasions when a followup inspection is conducted before the employer's 15-day working period allowed for contest has expired. Since a followup inspection is primarily for the purpose of verifying compliance and therefore is scheduled as close to the abatement date as possible, this situation will usually occur where cited violations have short abatement periods. Where such a followup disclosed that an employer has failed to abate a violation within the period specified in the citation, the 15 working days allowed for contest has not yet expired, and the employer has not yet exercised his appeal rights, proposed penalties for failure to abate will be assessed against the employer in accordance with the procedures outlined in paragraph B.8.c.(1) of this chapter--subject to cancellation if the employer subsequently files a notice of intention to contest.

e. For failure to correct an "other" violation, the employer shall be assessed a proposed penalty equal to the unadjusted penalty as shown on the original worksheet, MTSH-10 Form, for each day that the previously cited violation continues after the expiration of the prescribed abatement period. However, in no case should this proposed additional daily penalty be less than $100 per day. The employer shall also be assessed an additional penalty equal to 50 percent of the adjusted penalty. In those instances where no penalty was initially proposed, the additional daily penalty to be proposed under Section 26(1)(c) of the Act shall be $100 per day.

NOTE: "Penalty Assessment Worksheet - Other Violations, "MTSH-10 Form, Item 17 instruction is in error. It should read: "Add 50 percent for loss of abatement credit, (50% x Column 8)."

(1) The same MTSH-10 Form used to calculate the initial proposed penalties shall again be used to calculate any proposed penalties to be assessed for failure to abate. Detailed instructions on how to calculate the proposed penalties and how to complete this form are explained in Chapter XII.

(2) Once the proposed penalties for failure to abate on "other" violation has been calculated on the worksheet, MTSH-10 Form, the "Notification of Failure to Correct Violation and of Proposed Additional Penalty", MTSH-3A Form, signed by the Compliance Supervisor, shall be sent by certified mail immediately after termination of the followup inspection. The Compliance Supervisor may have a SHCO personally deliver the MTSH-3A Form. An original signed copy of the MTSH-3A Form shall be retained in the case file.

f. For failure to correct a serious violation; the employer shall be assessed a proposed penalty of $1,000 for each day that the serious violation continues after the expiration of the prescribed abatement period.

(1) The original worksheet, MTSH-11 Form, used to calculate the initial proposed penalties shall be used to calculate additional penalties for failure to abate. Detailed instructions on how to calculate additional proposed penalties and how to complete the form are explained in Chapter XII.

(2) Once the proposed penalty for failure to abate a serious violation has been calculated on the MTSH-11 Form, the notification procedures to be followed are the same as contained in paragraph B.8.c.(2) of this Chapter.

g. When a violation consists of a number of instances and on followup inspection it is found that some instances of the violation have been abated and others have not, the daily penalty and loss of the abatement credit should be calculated in proportion to the extent that the violation has been abated. This adjustment should be noted on the applicable penalty assessment worksheet.

h. When a citation which has been issued contains multistep abatement requirements and on the followup inspection it is found that the employer failed to make the necessary corrections required within the abatement period specified for that correction, the daily penalty and loss of the abatement credit shall be calculated in accordance with the procedure outlined in paragraph B.8.c. through B.8.f. of this Chapter. (See Chapter X for detailed instructions on multistep abatement periods.)

9. Violation of Regulatory Requirements Contained in MOSHA-1973

a. Section 26(1)(d) of the Act stipulates that any employer who violates posting requirements shall be assessed a civil penalty of up to $1,000 for each violation.

(1) MOSHA-1973 Section 8(3)(a) states that each employer shall post and keep posted a notice or notices, to be furnished by the division. If the information notice is not displayed as prescribed by Section 8(3)(a), this alleged violation shall be included on an MTSH-2 Form. No penalty shall be proposed unless a copy of the prescribed notice had been furnished to the employer or the employer had knowledge of such a notice. A proposed penalty of $50 shall be assessed when warranted. The proposed penalty shall not be adjusted nor shall abatement credit be given.

(2) MOSHA-1973 Section 9(2) states that upon receipt of any citation under the Act, the employer shall immediately post such citation or a copy thereof, at or near each place an alleged violation referred to in the citation occurred or as excepted by the reference. If a citation, which has been received by an employer is not posted as prescribed in MOSHA-1973 Section 9(2), this alleged violation shall be included on an MTSH-2 Form. A proposed penalty of $500 shall be assessed for each citation not so posted. The proposed penalty shall not be adjusted nor shall abatement credit be given. MOSHA-1973 18(6) requires compliance with 29 CFR Section 1904.

(3) 29 CFR Section 1904.5 requires that an employer shall post a copy of the OSHA No. 102 Form, "Summary Occupational Injuries and Illnesses", in a conspicuous place and maintained where notices to its employees are customarily posted. If the OSHA No. 102 Form is not posted as prescribed in 29 CFR Section 1904.5, this alleged violation shall not be proposed unless a copy of the "Recordkeeping Requirements" pamphlet has been furnished to the employer or the employer had knowledge of the OSHA No. 102 Form and its posting requirement. A proposed penalty of $100 shall be assessed when warranted. The proposed penalty shall not be adjusted nor shall abatement credit be given.

(4) MOSHA-1973 18(6) requires compliance with 29 CFR Section 1904. 29 CFR 1904.8 requires the employer report to the nearest Area Office, either orally or in writing, any occurrence of employment accident which is fatal to one or more employees or which results in hospitalization of five or more employees, within 48 hours of such occurrence. For violation of this regulation, a penalty of $200 shall be proposed. This proposed penalty will not be adjusted nor shall abatement credit be given.

b. Section 26(2)(a) of the Act stipulates that any employer who violates any standard, rule or order prescribed pursuant to the Act such as recordkeeping requirements may be assessed a civil penalty of up to $1,000 for each violation. MOSHA-1973 18(6) requires compliance with 29CFR Section 1904.

(1) 29 CFR Section 1904.2 Section 1904.4, and Section 1904.4a requires an employer to maintain an OSHA No. 100 Form, "Log of Occupational Injuries and Illnesses"; and OSHA No. 101 Form, "Supplementary Record of Occupational Injuries and Illnesses"; or when the above forms are not available the data shall be recorded in a manner which is consistent with the specimen of OSHA No. 100 and OSHA No. 101 Forms provided in Title 29 CFR Part 1904. If these records are not maintained as prescribed in Title 29 CFR Part 1904, they shall be included as alleged violations on a OSHA-2 Form. A proposed penalty of $100 shall be assessed. The proposed penalty shall not be adjusted nor shall abatement credit be given.

(2) 29 CFR Section 1904.5 requires an employer to compile a "Summary Occupational Injuries and Illnesses", OSHA No. 102 Form. If the OSHA No. 102 Form is not maintained as Prescribed in Section 1904.5, this alleged violation shall be included on an OSHA-2 Form. No penalty shall be proposed unless a copy of the "Recordkeeping Requirements" pamphlet has been furnished to employer or the employer has knowledge of such a requirement. A proposed penalty of $100 shall be assessed when warranted. The proposed penalty shall not be adjusted nor shall abatement credit be given.

c. Section 26(2)(b) of the Act stipulates that any employer who violates any standard, rule or order prescribed pursuant to the Act such as the requirement to promptly notify the authorized representative of employees of an inspection if advance notice is given and if the identity of such representative is known to the employer, may be assessed a civil penalty of up to $1,000 for each violation. If such notification of an inspection was not given, this alleged violation shall be included on an MTSH-2 Form. A proposed penalty of $200 shall be assessed for failure to notify, has been violated by an employer. This proposed penalty shall not be adjusted nor shall abatement credit be given.

10. Willful or Repeated Violation

Section 26(1)(e) of the Act establishes the penalty limit for each repeated or willful violation. Types of citations, notification of proposed penalty, and procedures for calculating the amount of the proposed penalty for both willful and repeated violations will be forthcoming. Where the Compliance Supervisor believes the violation may be willful or repeated, he should consult with his Bureau Chief. After such consultation, the Bureau Chief shall refer the matter to the Bureau Solicitor for further action.

C. Criminal Penalties

1. Willful Violations Causing Death

Section 26(2)(a) of the Act provides that any employer convicted of a willful violation of any standard, rule, order, or regulation causing the death of any employee shall be punished by a fine of not more than $10,000, or by imprisonment or by both. For a second conviction under this section, punishment shall be by a fine of not more than $20,000 or by imprisonment for not more than one year, or by both.

2. Giving Unauthorized Advance Notice of Inspection

Section 26(2)(b) of the Act provides that any person who gives advance notice of any inspection to be conducted under the Act shall, upon conviction, be punished by a fine of not more than $1,000 or by imprisonment for not more than 6 months, or by both. It should be noted that the giving of advance notice of inspections is not banned where it is authorized. In such circumstances, the sanctions for giving advance notice would not apply. (See Chapter V, Section B, for further instruction pertaining to advance notice.)

3. Giving False Information

Section 26(2)(c) of the Act provides that, "Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to the Act shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both."

4. Killing, Assaulting or Hampering the Work of Enforcement Personnel

Section 26(2)(e)(f) of the Act provides that any person who kills, assaults, or resists OSH enforcement personnel engaged in the performance of their official duties shall, upon conviction, be subject to the following punishment:

(a) For assaulting such personnel--a fine of not more than $5,000 or imprisonment consistent with Montana Criminal Code.

(b) For assaulting such personnel with a deadly weapon--a fine of not more than $10,000 or imprisonment consistent with Montana Criminal Code.

(c) For the murder of such personnel--imprisonment in State Prison for a term consistent with the offense, Homicide, of the Montana Criminal Code.

5. Procedures to be Followed When Criminal Penalties are Involved

Criminal penalties are imposed by the courts after trials and not by the Montana Occupational Safety and Health Review Commission. Therefore, no criminal penalties shall be proposed by the Workmens Compensation Division. Where the SHCO believes a violation may involve a crime, he shall consult with his Compliance Supervisor. After such consultation, the Compliance Supervisor shall refer the matter to his Bureau Chief who will in turn refer the matter to the Bureau Solicitor for further action.

D. Procedures for Handling Monies Received from Employers

1. Responsibility

The Area Offices will be responsible for collecting and depositing monies payable for penalties assessed.

2. Method of Payment

Penalties are payable only by certified check or money order. Payment in cash is not to be accepted.

3. "Certificate of Deposit," (Reserved)

4. Deposit Procedures

Monies received in the Area Office will be deposited into the State Treasurey within 48 hours after receipt. The procedures to be used are as follows:

a. Depositing penalty monies collected.

(1) Reserved

(2) Reserved

E. Collection and Recovery Penalties

1. Time Allowed for Payment of Penalties

a. When citation(s) and/or proposed penalty are uncontested, the payment is due and payable immediately after the lapse of 15 working days following receipt of the appropriate penalty notice.

b. When citation(s) and/or proposed penalty are contested, the payment is not due and payable until final adjudication by the Montana Occupational Safety and Health Review Commission and/or by the appropriate District Court.

c. Where some alleged citation(s) and/or proposed penalties are contested and others uncontested, the appropriate paragraph above is applicable.

2. Partial or Time Payment of Penalties

Civil penalties owed are to be paid in full and only by a certified check or money order. In extraordinary cases where payment of a proposed penalty places extreme burden on the employer, the Compliance Supervisor may consult with the Helena Office regarding alternate methods of payment.

3. When Payment has not Been Received Within the Allowable Time Period

a. Expiration of 15-day working period--or other authorized period.

(1) Compliance Supervisor notifies the Bureau Chief.

(2) Bureau Chief writes the company by certified mail, return receipt requested, reviewing the facts and proposed penalty and informs the company that:

(a) Time to contest has elapsed.

(b) The assessed penalty is deemed a final order of the Commission.

(c) The assessment is not subject to review.

(d) Payment is due within a specified time.

(e) Payment should be by certified check or money order.

b. Expiration of 10-day remittance period.

(1) Send complete file to the Bureau Solicitor's office.

(2) The Bureau Solicitor will make further attempts to collect the penalty without litigation--if unsuccessful, he will decide on the next course of action.

XII. FIELD REPORTING PROCEDURES AND FORMS (RESERVED)

CHAPTER XIII--INDUSTRIAL HYGIENE AND OCCUPATIONAL HEALTH

A. Definition, Purpose and Scope

1. Definition

a. Compliance operations involve the interface of many technical and professional disciplines. In this Manual and for purposes of enforcement under the Act, the compliance officer, regardless of expertise, is referred to as a SHCO (Safety and Health Compliance Officer).

b. This Chapter delineates the interfaces between the health and safety disciplines of compliance operations. Therefore, for the purpose of discussion, this Chapter only refers to the health specialist compliance officer as an Industrial Hygienist and the safety specialist as a SHCO.

2. Purpose and Scope

a. To provide guidelines for effective and efficient utilization of technical skills required to evaluate the working environment.

b. The Bureau of Safety and Health is charged with enforcement responsibilities for the safety and health of employees covered under the Act. To fulfill BOSH's responsibilities under this Act it has been necessary to establish the field industrial hygiene program. The program is directed by the Bureau Chief and the Assistant Chief of Health in accordance with policies and principles established by the Headquarters Office.

c. BOSH's primary responsibility in occupational health is recognizing and eliminating hazards by enforcing standards and regulations. BOSH does not engage in research and development. BOSH will advise management only to the point of effecting compliance but short of competing with consulting firms engaged in the same specialties. Any management requesting definitive advice on any occupational health problem is to be referred to professional consultants, State agencies or insurance carriers.

d. BOSH has developed this guide for Industrial Hygienists and SHCO's to outline the basic procedures for occupational health functions. Dual functions in safety and health require that both the Industrial Hygienist and the SHCO work toward an interchange of their specialities in a cooperative united effort with the single purpose of providing a safe and healthful occupational environment.

B. Relationship of the Industrial Hygienist--SHCO

It must be recognized by the Industrial Hygienists, and SHCO's that each is a specialist within his respective field and that when technical problems arise the appropriate specialist will be the determining authority, subject to review and approval of the Assistant Chief of Health Compliance Supervisor. The SHCO's should draw heavily on the Industrial Hygienists to improve their knowledge of health hazards to enable them to recognize and, in many instances, deal with violations of health standards. The Industrial Hygienists, conversely, should look to the SHCO's for the most effective contacts and safety information pertaining to a given industry or operation. A team approach is required and no specialty will be subordinate to any other.

C. General Work Responsibility Subject to Assistant Chief of Health Compliance Supervisor

The Assistant Chief of Health Compliance Supervisor will receive and act upon all requests for the services of Industrial Hygienists. He will make all assignments, arrange through the National Office of Training and Education for all formal training and coordinate the activities of the specialties to ensure full effectiveness and an effective united fron in the health and safety activity.

D. SHCO Training and Responsibility

Each SHCO shall have received the U. S. Department of Labor Industrial Hygienist Training Course prior to testing, measuring, and documenting possible health violations. If the SHCO lacks this training or qualifications, the SHCO shall request the Industrial Hygienist to perform the testing and measuring requirements. The SHCO will make only such test as can be done with direct reading instruments and indicating tubes.

E. Inspections

1. The SHCO during the course of their regular inspections will be continuously aware of and on the lookout for health hazards. If the hazard detected can be properly tested, measured, documented, and cited by the SHCO he will do so. If the hazard requires further study or tests, if the SHCO feels that his determination would be weaker than that of the Industrial Hygienist in a legal hearing or if he has any doubt about his identification of a hazard he should request the services of the Industrial Hygienist through the Compliance Supervisor. In his request, he should include information essential to the Industrial Hygienist in planning

an inspection. If possible, a detailed verbal description of the operation thought to be hazardous should be provided to the Industrail Hygienist before his visit.

2. The Industrial Hygienist, with the information supplied, should arrange for the necessary test equipment to accomplish the particular inspection decided on by the Assistant Chief of Health. He should, if possible, be accompanied by the SHCO for an on-site exchange of knowledge. If the inspection is distant from the duty station, the Industrial Hygienist and SHCO may spend the remainder of the week on combined safety and health inspections of other plants in the area at the discretion of the Assistant Chief of Health/ Compliance Supervisor.

3. On a joint inspection, both the SHCO and Industrial Hygienist will make out and sign separate MTSH Forms.

F. Scope and Type of Health Hazards

1. Industrial Hygiene is the science and art devoted to the recognition, evaluation and control of those environmental factors or hazards arising in or from the workplace which may cause sickness, impaired health and well-being, or significant discomfort among workers.

2. These Hazards May Be

   a. Chemical liquids in the form of mists or vapors, gases, or solids in the forms of dusts or fumes. In addition to the hazard of inhalation, any of these forms may act as skin irritants or may be systemically toxic by absorption through the skin.

   b. Physical, such as electromagnetic and ionizing radiation, noise, vibration and extremes of temperature and pressure.

   c. Biological, such as insects, molds, fungi and bacterial including such sanitation and housekeeping items as potable water, removal of industrial waste and sewage, food handling, and personal cleanliness in an orderly workplace.

   d. Biochemical, such as monotony, repetitive motion, and fatigue. Task design including placement of work and worker is critical. Some disease results from improper design of equipment. Tenosynovitis in metal chippers and grinders is a classic example.

3. Implementation of An Industrial Hygiene Program Calls For

   a. Knowledge and recognition of hazards arising out of work operations and processes.

b. Evaluation and measurement of the magnitude of the hazard, based on past experience and study.

c. Control of the hazard by isolation, substitution; change of process, local exhaust ventilation, general ventilation, training and education. When these methods have failed, the use of personal protective equipment may be permitted.

G. Chemical Hazards

1. Judged by the number of workers at risk, exposure to chemical hazards is the most important problem. Excluding skin disease the most significant problems occur from the inhalation of chemicals in the form of gas, vapor, mist, dust, or fume. The state of the matter involved is defined as follows:

Gases - will occupy the space in which they are enclosed. They cannot be liquified by increased pressure alone.

Vapors - similar to gases except that they can be liquified by increased pressure.

Mists - suspension of small drops formed by atomization of liquid or by condensation of vapor.

Fumes - colloidal system of solid particles formed by processes such as combustion, distillation, sublimation or condensation.

Dusts - discrete solid particles produced by crushing, grinding or other mechanical processes.

2. Matter May Have the Following Deleterious Effects on Workers

a. Irritation: Corrosive or vesicant action on tissue surfaces. Breathing of such materials may irritate the upper respiratory tract, the upper respiratory tract and lung tissue, or the terminal passages of the lungs and the air sacs, depending upon the solubility of the material. Contact with the skin surface may produce various kinds of primary irritation dermatitis.

b. Inhalation of biologically inert gases may dilute the atmospheric oxygen below the normal blood saturation value and disturb cellular processes. Other gases and vapors may prevent the blood from carrying oxygen to the tissues or interfere with its transfer from the blood to the tissue, producing chemical asphyxia. Carbon monoxide and hydrogen cyanide are examples.

c. Some substances may affect the central nervous system and brain, to produce narcosis and/or anaesthesia. Many solvents have these effects.

d. Inhalation, ingestion or skin contact: Some materials may affect one or more of the internal organs, the blood forming organs or the nervous system. Various compounds of lead are examples.

e. Inhaled particulate matter may produce fibrotic reactions (such as silicosis).

f. Inhaled or absorbed bacterial or other micro-organisms may produce their own peculiar reactions.

g. Contact with some chemicals by any route may produce cancer.

h. Substances are often classified according to the major reaction which they produce, as asphyxiants, systemic toxins, pneumoconiosis producing, and so on.

H. Physical Hazards

1. Physical hazards follow chemical hazards with respect to the number of workers at risk. Therefore, careful observation must be made for exposure to ionizing radiation such as X-ray and gamma radiation from radiography or from any high voltage electronic tube; alpha, beta, gamma and neutron radiation from the mining and production of radioactive materials. Damage from this radiation may be genetic or somatic or both.

2. Ultraviolet radiation from arc welding or other processes involving electrical discharges; microwave radiation from communications equipment and heatless cooking; and infrared radiation from industrial processes may produce somatic damage.

3. Noise and vibration may produce hearing loss and nerve damage. High or low temperature or pressure may produce tissue damage.

I. Biological Hazards

Biological hazards may produce tissue and nerve damage or diseases. Brucellosis and anthrax may occur from processing meat products or hides. Psittacosis may occur from processing fowl. Dermatitis may develop from processing food products, particularly those containing proteolytic enzymes or those subject to infestation by a variety or irritating organisms.

J. Biomechanical Hazards

1. Fatigue, accidents, and harmful conditions may be caused by improperly designed tools or work area. Unnecessary lifting or reaching, poor visual conditions, or repeated motions are responsible for disease and accidents in the occupational environment. Designing the tools and the job to be done to fit the man should be of prime importance to the employer. Maximum use of engineering and biomechanical principles are requirements to eliminate hazards of this kind.

2. Exposure to any of these hazards may produce an immediate response due to the intensity of the hazard; or the response may result from longer exposure at a lower intensity.

K. How to Recognize Different Health Hazards

1. Recognition and evaluation of occupational hazards must both occur before control measures can be started. Proper control can only be assured by means of an industrial hygiene survey of the environment to determine the magnitude of the hazard and a resurvey to determine the improvement accomplished and the need for further correction.

2. In most processes many hazards exist together. Hence, it is necessary to carefully examine the overall process in order not to pass potentially hazardous conditions.

3. There are a variety of types of processes which should arouse immediate suspicion of a health hazard unless there is specific information that a process is properly controlled. Some of these are:

   a. Any process involving combustion should be looked at to determine what byproducts of the combustion may be released to the environment and how high the burner noise may be.

   b. Any process involving high temperature, with or without combustion, should be questioned as to the possibility of excessive heat on the employees, either as the result of high ambient temperature or of excessive radiant heat.

   c. Any process involving induction heating, including microwave, should be questioned as to heating effects on the employees and as to noise levels, including ultrasonic effects.

   d. Any process involving the melting of metal should be studied for toxicity of the metal fume or dust produced.

   e. Any process involving an electric discharge in air should be examined for the possibility of production of ozone and oxides of nitrogen. If it is an arc or spark discharge, the effects of the radiation from the flame and the products of destruction of the electrodes should be investigated. Processes of this sort also commonly involve hazards of high potential electrical circuits or low internal resistance.

f. Any process involving an electric discharge in vacuum is apt to be a source of ionizing radiation and to involve high potential. Such processes include all high powered oscillating circuits, X-ray units, electron beam equipment, and similar devices.

g. Grinding, crushing, or comminuting of any material involves the hazard of dust of the material being treated and of the grinding materials.

h. Conveying, sifting, sieving, screening, or bolting of any dry material presents a dust hazard.

i. Mixing of dry material presents a dust hazard.

j. Mixing of wet materials presents possible hazards of solvent vapors, mists, possibly dust, and noise.

k. Wet grinding of any material will have possible hazards of mist, dust and noise.

l. Dry grinding operations, including milling and sand blasting, should be examined for dust and noise hazards.

m. Cold bending, forming, or cutting of metals or nonmetals should be examined for hazards of contact with lubricant, inhalation of lubricant mist, and excessive noise.

n. Hot bending, forming, or cutting of metals or nonmetals may have the hazards of lubricant mist, decomposition products of the lubricant, contact with the lubricant, heat (including radiant heat), noise, and dust.

o. Handling of small parts present hazards of repeated motion and mechanical shock.

p. Coating operations, generally preceded by solvent degreasing.

   (1) Electroplating--toxicity of the various metallic salts--acids, and alkalis both by skin contact and by inhalation. Particularly well known are nickel and cobalt as causes of dermatitis, chromium for production of nasal ulcers, and alkaline cleaning baths as irritants to eyes and upper respiratory system.

(2) Painting should be examined for the possibility of hazards from inhalation and contact with toxic and irritating solvent and inhalation of toxic pigments.

(3) Ceramic coating presents the same hazards of toxic pigments as painting plus hazards of heat from the furnaces, and from the hot ware.

(4) Mechanical coating with metals presents hazards of dust and fumes of metals and fluxes in addition to heat and radiation.

q. Explosive processing will involve gases from the explosive, largely carbon monoxide and oxides of nitrogen, and dust from the material being processed.

r. Warehousing should be checked for carbon monoxide and oxides of nitrogen.

L. Arranging the Industrial Hygiene Inspection

1. The Industrial Hygiene inspection is a blend of two basic concepts, First, the application of past experience to delineate the expected hazards in a plant by category. Foundries will have dust, noise, and metal fumes as the predominant problems. Refineries and production of chemicals have inhalation of toxic gases and solids as the main hazard. Industries involved in fabrication of metal and protective coatings have solvent vapors, aerosols, and noise as their major hazards.

2. Second, a safety and health inspection by the SHCO or Industrial Hygienist may require an Industrial Hygiene inspection of a specific plant to evaluate the existing and potential hazards involved.

3. The SHCO can make a preliminary judgment by developing the following information prior to and during the plant inspection:

   a. What is produced?

   b. What raw material is used?

   c. What materials are added in the process?

   d. What operational procedures are used?

   e. How many employees are exposed and for how long?

4. Additional information will become available at the time of the plant inspection and can be noted on the MTSH-1A Form.

5. From a summary of the SHCO findings and knowledge of the plant, an employee complaint, or during an employee interview, the need for an Industrial Hygiene inspection may be indicated. To expedite the inspection, final arrangements for the inspection may be written or verbal between management and the Compliance Supervisor because sampling and observation of the plant may require several days. Therefore, arrangements for a representative of management, sampling equipment, location of operations, and work schedules must be completed before the inspection starts. Many hazards may be evaluated during the workday and this information made available immediately. However, some hazard evaluation may require laboratory facilities; therefore, the results and interpretation will be delayed.

6. When samples are collected for laboratory evaluation every precaution must be taken to insure that the samples are representative of the working environment. This may require that the entire operation be observed before collecting samples at such location to assure the representativeness of the sample. The majority of the Threshold Limit Values (TLV) are based on a concentration averaged over an 8-hour exposure. This average, amy for example, allow excursions above the TLV for a time up to 15 minutes if a like excursion below the TLV for an equal time occurs. An appropriate factor for such an excursion dependent upon a particular TLV must be applied. It is also important to consider exposures to more than one contaminant simultaneously and to reduce the TLV's for such an exposure. Carbon monoxide and nitrogen dioxide from diesel exhaust illustrate a multiple exposure of this type.

M. Sampling Procedure for Industrial Hygiene Inspection

1. Chemical Hazards

Samples taken to evaluate the chemical hazards in the environment may be classified as follows:

Gases and Vapors	a.	May be determined by use of approved calibrated field indicator tubes yielding direct readings.
	b.	May be collected in containers or absorbed on charcoal for laboratory evaluation. Our standard method for organic vapor will be absorption on charcoal and chromatographic determination.
Fumes and Mists	a.	May be absorbed and measured in the field.
	b.	May be absorbed and evaluated in the laboratory.
	c.	May be collected on filter media and analyzed in the laboratory.

Dusts a. May be fractionated into respirable size by a cyclone separator and weighed to determine the concentration.

b. May be collected on an open-faced filter and weighed.

c. May be collected in an appropriate manner and counted.

2. Physical Hazards

Most physical hazards can be evaluated in the field by direct reading instruments.

a. Pressure may be measured barometrically.

b. Temperature may be measured by thermometer, thermocouple or radiometer. Determination of heat stress, however, requires in some form the measurement of evaporation rate. Usually it is inferred from humidity and air velocity.

c. Ionizing radiation may be measured by survey meter, personal dosimetry of film badge techniques.

d. Noise may be measured with sound level meters or octave band analyzers. Vibration may be determined with additional sound level equipment.

e. A number of direct reading meters are available for various sorts of nonionizing radiation.

3. Biological Hazards

The taking of biological samples will be avoided since there are no standards defining limits for them. In the event inspection findings indicate a requirement for this specialized sampling for evaluation, the Headquarters Office of Compliance will be contacted to provide guidelines for sampling and testing requirements, techniques, and standards.

4. Ergonomic Hazards

Inspection of the worker and workplace may determine the cause of fatigue from poorly designed tools and equipment. Improper placement of worker and work, unnecessary lifting, vibration, distracting movement of machinery may cause bursitis or other painful conditions. The nurse may supply information about worker complaints arising from those conditions.

5. Procedure for Taking the Samples of Toxic Materials

Gases and Vapors

a. The use of approved calibrated field monitoring tubes sampling the workers breathing zone for an appropriate time will yield reliable results.

b. Appropriate volumes of gas collected in containers or absorbed on charcoal, 1-100 liters of sample will yield reliable results. Consult the sampling data sheet for the specific compound for details.

Fumes and Mists

a. 30-100 liter samples collected by absorption in standard solutions with visual indicators will yield reliable results in the field. (Consult the Headquarters laboratory before taking samples.)

b. 30-50 liter samples absorbed in standard solution can be analyzed by laboratory procedures yielding reliable results. We will use this method when appropriate dry methods are not available. (Consult Headquarters laboratory before taking samples.)

c. 30-100 liter samples collected on a filter medium and analyzed in the laboratory will yield reliable results. This is the method of choice when proper media are available. Consult the data sheet for the specific compound.

Dusts

a. Personal low volume, size selective, cyclone separator, samples should be 4-8-hour samples. Area Samples, size-selective 15-20 lpm should be 1-4 hours to yield reliable results.

b. Open filters appropriately weighed or counted.

c. Personal samples for asbestos exposure should be 5-6 minutes depending on the airborne loading visually judged to yield reliable results. Sampling must be repeated enough to establish reliable exposure records.

Any sampling procedure should be undertaken to yield the average exposure for an 8-hour day. By observing a complete cycle of an operation it may be possible to choose a sampling time that will yield an estimate of the 8-hour exposure. In cases where the TLV/ is a ceiling value the need for long sampling period is negated, but it is necessary to choose the sampling time to include the period of highest concentration. These values are exception rather than the rule. See the section on sampling to meet the 8-hour time weighted average criterion.

N. Taking Air Samples to Meet the Test of Time-Weighted Average Concentration

1. There are a number of criteria which must be met by air samples if they are to be of use in the compliance program:

   a. It must relate directly to the exposure of one employee or more. This means that it must usually be taken in the breathing zone of a particular employee. There are instances of nice, even contaminations throughout a working area but they are extremely rare.

   b. The volume sampled must be sufficient to permit a good determination of the contaminant sampled if it is present at a concentration equal to the TLV. For this reason you must acquaint yourself with the nature and the sensitivity of the analytical procedure before starting to sample any contaminant.

   c. The sampling period must usually be such as to give a direct measure of the total exposure of the employees concerned in a full shift.

   d. The sample must be sealed and identified prior to shipment to the laboratory so that it will be possible to positively identify the laboratory determination with the time and place of sampling and with the individual who took the sample.

2. There are various methods for meeting the first criterion. The most satisfactory is the use of a personal sampler with the sampling head as close as is conveniently possible to the employee's head. When the personal sampler is not available or no satisfactory method for use of that kind of sample is available then the method used should approximate the same condition as closely as possible. Impinger tubes, bubblers, or direct reading tubes should generally be hand-held and follow the employee concerned as closely as is possible without interfering with his work or exposing him to an added hazard.

3. Area samples, taken by settling the sampling equipment in a fixed position in the work area, are useful as an index of general contamination but they usually are only remotely related to the actual exposure of the employee who is commonly at the point of generation of the contaminant and frequently will have on exposure an order of magnitude greater than is indicated by an area sample.

4. The second criterion should be fairly self-explanatory. Methods of analysis have definite limits of sensitivity and if the amount of material present is too small the only reply which the laboratory can give is that the concentration is less than a specified amount. This amount should be something less than the TLV. There is no real disadvantage in an excessively large sample since it

is always possible, and easy, to take an aliquot of anything too large to handle conveniently.

5. The third criterion is not nearly so clear-cut as the others. In adopting the Threshold Limit Values of the American Conference of Industrial Hygienists the Department has also adopted the concept of the time-weighted average concentration for a workday. The same concept is contained in a more specific form in the Occupational Health and Safety Standard, Federal Register dated August 13, 1971, page 10506A Table G-2. This concept permits limited excursions of concentration above the listed TLV provided that they are compensated by equivalent excursions below the listed value. Limitations on this concept are the listed values preceded by a "C" (for ceiling) in the table. "C" values may not be exceeded at any time and any excursion above the listed value constitutes a violation. The other limitation is a limitation on the size of the excursion. For the TLV's the permissible size of the excursion is given in the table below.

TLV	0-1	1-10	10-100	100-1000
factor	3	2	1.5	1.25

6. That is to say if the TLV is 0.1 (either in mg/m^3 or in ppm) an excursion to 0.3 for 10 or 15 minutes is permissible provided that it is compensated by an excursion to 0.03 for 43 minutes or, in general:

$$C_aT_a + C_bT_b + \text{-----------------------} \; C_nT_n = 8TLV$$

where:

T_a is the first time period during the shift,
C_a is the concentration in period "a"
T_b is another time period during the shift,
C_b is the concentration during period "b"
T_n is the n^{th} or final time period in the shift, and
C_n is the concentration during period "n"

7. This is simply the summation throughout the workday of the concentrations encountered in each time interval and adjusted to an 8-hour standard workday. In practice it may be determined by estimating the concentration for each time interval and multiplying by the interval in hours, these products for all of the intervals in the workday added and divided by the 8 hours of the standard workday should give a quotient not larger than the TLV.

8. To meet the test of measuring the time weighted average concentration the sampling method and period should be chosen to average out these permissible fluctuations and also to measure a representative sample of the fluctuations which will occur in a day's work. There is no magic formula which will guarantee

doing it, but there are some guidelines. If the operation is repetitive the sampling period should be long enough to cover at least two full cycles of operation and generally not less than 30 minutes. If there is reason to think that there are wide fluctuations in concentration the long-term samples should be supplemented by samples designed to catch the peaks. If the exposure being measured is from a continuous operation--the exposure of an operator in a chemical plant--it will be necessary to follow the particular operator through two cycles of his operation or through a full shift if his operations follow a random pattern during the day. For operations of this sort it is particularly important to find out what the workers do when the equipment is down for maintenance or process change. Such periods are frequently also periods of maximal exposure.

Recording of Findings

1. Because the results of field determinations and laboratory analyses may become part of the administrative hearing record, certain forensic requirements must be met to properly identify the sample and its control following its collection. Acceptable documentation of samples require the use of forms:

   a. Analyst Worksheet.

   b. Sample Accountability Record.

   c. Sample Identification.

   d. Sealing Tape Label for Sample Container.

   e. Monthly Noise Control Report.

   f. Plant Noise Survey Form.

2. Completion of the asbestos survey form and the Preliminary Noise Survey form present additional documentation of safety and health inspections.

3. It should be obvious that grab samples may not be suitable for evaluating 8-hour exposures for record purposes.

4. To properly interpret the results of the Industrial Hygiene inspection a detailed plan of operation must be developed and followed as outlined including the collection, analysis and evaluation of the results to determine the presence or absence of a hazard or hazards, and if additional controls of these hazards are required.

P. Sample Analysis and Findings

1. Mailing or shipping samples to the Headquarters laboratory for analysis shall be accomplished by registered or certified airmail or other means of transit which have system of registering or certifying receipt and delivery.

2. When the samples are shipped or mailed the Headquarters laboratory shall notify by telephone time of shipping and contents of the shipment.

3. Marking on the package or envelope containing the sample(s) should be "URGENT" SAFETY for ready identification and mailed to:

   Assistant Chief of Health
   815 Front Street
   Helena, Montana 59601

4. Samples shall be submitted to the Headquarters laboratory by an Industrial Hygienist.

5. Assistant Chief of Health shall make advance arrangements with local recognized laboratories for rapid analyses of samples from suspected imminent danger situations which require immediate action.

XIV. STANDARDS INTERPRETATION AND CHANGE REQUESTED (RESERVED)

XV. TRAINING (RESERVED)

XVI. SAFETY AND HEALTH PROMOTION AND CONSULTATIVE SERVICES (RESERVED)

XVII. STATE JURISDICTION AND STATE PLANS (RESERVED)

XVIII. AGREEMENTS WITH OTHER FEDERAL AGENCIES (RESERVED)

XIX. FEDERAL AGENCY PROGRAMS (RESERVED)

XX. RESEARCH AND RELATED ACTIVITIES (RESERVED)

XXI. ANNOTATED CASE STUDIES (RESERVED)

XXII. REVIEW COMMISSION (RESERVED)

XXIII. VARIANCES (RESERVED)

XXIV. DISCLOSURE AND PUBLICITY (RESERVED)